THE GOVERNMENT

OF

SOUTH AFRICA

VOL. I.



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THE GOVERNMENT

OF

SOUTH AFRICA.

VOL. I.

Closer Union Society

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PREFACE.

It is necessary to introduce this book with some explanation of its purpose, and also of the manner of its production. The people of South Africa are learning to trace the many misfortunes that have visited them to a common source of mischief,—events which long ago divided into separate States a country naturally fitted to be one. Every day they are coming to see more clearly that nothing can avail to protect them from similar mischiefs in future years, but national union under a single sovereign government competent to speak and to act for South Africa as a whole.

The project of uniting South Africa under one government

The reformed and unified constitution for which this country hopes, cannot be created without regard to the state of affairs existing at the present day. The new order must be made from the materials of the old; and before a better and simpler arrangement can be evolved, the existing systems in all their diversity and with all their defects must be clearly comprehended. There are a certain number of men in each colony who have taken part in its affairs and understand them; but they must understand the administration of neighbouring colonies as well, in order to discuss any project for uniting them all under a single government.

necessitates a study of existing governments.

various persons have combined to advance this study,

With this idea before them a number of persons in various parts of South Africa have been working together for the last twelve months. Some have been able to contribute funds, and some their industry, while others have helped in both ways. As time went on the number of those anxious to be associated with these studies increased; but no formal organisation has existed, though a list of subscriptions, limited to a moderate amount in each case, has been kept.

assisted by the governments and their servants.

Every possible facility has been afforded to the compilers of this book by the various governments in South Africa, and the civil servants, acting on their authority, have spared no pains to supply the necessary information. The authors take this opportunity of recognising an obligation too great and too general to admit of any particular acknowledgments.

Responsibility for the results and reason for their publication.

The various persons who have shared in producing these volumes are not drawn from any one political school or party; and they have been joined in the work only by a common aspiration that the people of South Africa may become one. The authors do not propose in these pages to formulate a definite scheme of union, but rather to provide information which will enable the reader to discuss such schemes whenever advanced. Nor do they intend to commit those who have been associated with them to any particular view expressed in the book. Such views there are and indeed must be, seeing that

it is impossible to give a complete account of the problems of South African government without touching on several contentious points. The object of the book is attained in so far as it provokes discussion.

The method of compilation adopted.

Such being the purpose and origin of the book, the plan upon which it has been carried out may now be stated. There are no less than eleven different areas of government in South Africa; and an account of them all in their various aspects, administrative and judicial, financial and political, would fill an encyclopædia overwhelming the reader with detail, and leaving no clear impression upon his mind. If the proposed enquiry is to effect its object, the picture must at all costs be definite, even at the sacrifice of completeness in detail. The outlines must be firmly drawn,and the draughtsmen must select what is essential, and forego much that is interesting and even important. They must aim at producing an account short enough and yet not too closely compressed to be read. With this end in view the first volume has been cleared of much tedious, but necessary detail, which has been relegated to a second volume of appendices in the form of memoranda, diagrams, tables and maps.

The facts described in this book are subject to constant change.

This book has already been issued by instalments in provisional form, so that any errors which the original draft contained might be detected and set right, and the authors are indebted for many valuable corrections which have been made at the instance

of their readers. In the meantime, however, the parliaments of the four colonies, which have all been in session, have altered the laws in various ways. Many of these alterations have been embodied in the present edition; the comparative table of mining laws, for instance, has been brought up to date, so as to reflect the alterations in the Transvaal gold law. On the other hand, it would not have been possible to show the results of the changes in the estimates or revenue laws made in the course of the recent sessions, unless the publication of these volumes had been postponed for several months. At the moment of writing, indeed, the Natal Parliament has not been prorogued. Arrangements are on foot, however, to continue the supply of information initiated in these volumes in the form of a monthly magazine, which will serve to focus the work of the Closer Union societies, and will enable the statistical tables contained in the appendices to be brought up to date from time to time.

Conclusions to which the enquiry points.

In conclusion, the authors desire to state that they began this work in the belief that federation was the only form of union possible in South Africa. As, however, their enquiries into the actual facts of South African government advanced, they found themselves carried in the opposite direction. They have felt obliged, therefore, to state conclusions which have been, as it were, forced upon them in spite of preconceived ideas; but in order that the public might have before them the

necessary material for considering both sides of the question, arrangements were made through the Closer Union Society of Cape Town for publishing the five principal federal constitutions, those of the United States, of Canada, of Australia, of Germany and Switzerland, together with some comparative account of their main provisions. The work was undertaken by Mr. B. K. Long, M.L.A., Barrister-at-Law, and has now been published under the title of "The Framework of Union." These two books should be read together, by those who wish to decide for themselves whether a unitary or a federal constitution is a better basis for the national union of South Africa.

Plan of the enquiry.

Some preliminary survey of the method adopted in the course of this enquiry may be helpful to the reader. The subject is divided into five parts.

Map of British South Africa.

In Part I. the Imperial and Colonial frontiers of South Africa are discussed, as well as the minor administrative areas into which the larger colonies are divided. The form of government at present existing in each colony or protectorate is also stated. To illustrate this part there is attached to the second volume a map of British South Africa, specially prepared through the courtesy of the Transvaal Government by the Surveyor-General of the Transvaal, assisted by the Surveyors-General of the other colonies.

Functions of government.

In Part II. are described the various primary functions which governments in

South Africa have been led, by force of circumstances, to undertake, as distinguished from other functions which are left to private enterprise. Beginning with the necessary functions of government, those which no one but a government can undertake, the enquiry proceeds to the functions which are not so essential, and finally to those which though handled by the State in South Africa are left in some countries entirely to private enterprise.

Organisation of government services.

Part III. deals with secondary functions—those duties which government must undertake as a means to the performance of its primary functions. The ordering of finance, of the public service, and of local authorities are the more important of these secondary functions. A description is given of the course which the process of reconstruction would follow in the event of federation or unification respectively. The process in the case of federation is illustrated by an historical account courteously prepared by Mr. R. R. Garran, one of the legal advisers of the Commonwealth Government of Australia, and one of the authors of the standard legal work on Commonwealth law. This narrative shows how, when the Australian States had completed the legal steps necessary to establish national unity, the unified government was actually brought into existence, and how it then proceeded to take over the duties assigned to it.

Process of centralising government in Australia described.

Nature of political control in self-governing Colonies.

Part IV. shows how government reduces the selection of its functions and the formulation of its methods to statutes, the discussion of which is the chief concern of politics. Some account is given of the machinery through which government, in the performance of its functions, is rendered amenable to popular control; and the relative positions of governors, cabinets and parliaments in the constitutions are ascertained.

Constitutional steps to creation of national government.

Part V. The multiplicity of existing governments having now been described, it remains to determine the constitutional procedure which is necessary in order to establish a single and sovereign government for the whole country. Part V. suggests an answer to this question.

PART I.

THE MAP OF BRITISH SOUTH AFRICA.

CHAPTER I.

Imperial and Colonial Frontiers.

Before proceeding to examine the political institutions of South Africa, the reader must have before his mind a correct picture of the country itself. It is convenient, therefore, to open this enquiry by a study of the map attached to the second volume, in which is shewn British South Africa as it extends from Lake Tanganyika to the Cape of Good Hope. This expanse of country measures 1,214,338 square miles in extent, so that it is not quite one-third the size of the continent of Europe. It contains nearly 8,000,000 inhabitants, of whom about 1,100,000 are whites.

Area and population.

Statement No. I.

On the map will be noted political boundaries of two kinds. In the first place, there are the boundaries surrounding the whole country. To the south these Imperial frontiers are fixed by the coast running from the mouth of the Orange river on the west to a few miles north of Kosi Bay on the east. North of these points its boundaries take the form of inland frontiers, fixed by past events rather than by physical conditions. In the second place, there are the internal boundaries dividing the eleven colonies and protectorates from one another, and these may be called

Two kinds of frontiers.

colonial frontiers—as distinguished from Imperial frontiers.

Eleven states of British South Africa.

The following is a list of the eleven different territories :—

Cape Colony.
Natal.
Orange River Colony.
Transvaal.
Southern Rhodesia.
Barotseland, North-Western Rhodesia.
North-Eastern Rhodesia.
Nyasaland.
Basutoland.
Bechuanaland Protectorate.
Swaziland.

Some knowledge of how this country was brought within the British dominions, and how in the process it was broken up into so many territories, each with a different government of its own, is necessary to a full understanding of the present political position.

Ancient traffic between Europe and the East

From the earliest times a certain traffic was carried on between Europe and the regions vaguely known as the Indies, in articles small enough to be brought by pack animals through difficult and dangerous countries. The trade from its nature was limited to gold, silver, jewels, silk, ivory, spices and other articles of value.

afforded a motive for finding a sea-route to Asia at the close of the middle ages.

As the wealth of Europe grew during the middle ages, so did the demand increase for these commodities, and especially for the spices produced in the islands to the south-

east of the Malay peninsula. The prices commanded even by the small packages, which alone could be conveyed so great a distance overland, rose so high that it became apparent that a sure fortune awaited the mariner who could find a sea-route to the islands where the spices were produced. The prize fell to the Portuguese. Their ships under Bartholomew Diaz first rounded the Cape of Good Hope towards the close of the fifteenth century. Eleven years later Diaz was followed by Vasco de Gama, who eventually reached Calicut on the coast of Malabar. In 1510 Albuquerque seized Malacca; and the Pope, in virtue of his claim to the viceregency of God upon earth, conferred upon Portugal the empire of the east. Portugal at once set herself to monopolise the trade between Europe and Asia, which from that time forward took the course by sea round the Cape. Upon so long a voyage the crews suffered terribly from scurvy; and it was essential to secure some port of call where ships could obtain fresh water and provisions. For this purpose Table Bay was the obvious place. A party landed there, and were murdered by the natives; whereupon the Portuguese, supposing the place to be tenanted by powerful and dangerous tribes, abandoned it, and fell back upon Algoa Bay, Delagoa Bay, and the recently discovered island of St. Helena, as ports of call.

The sea-route opened by the Portuguese.

1486.

1497.

1510.

Failure of the Portuguese to occupy the Cape of Good Hope.

For about seventy years the trade with the Indies absorbed the energies of the Portuguese, and the coast trade of Europe was left in the

Events which led the Dutch and English to open sea-trade with the east.

hands of the Dutch, who were content to purchase the products of the east at Lisbon, and to distribute them thence to the countries of consumption. In 1580, however, Portugal became part of the territories of Philip II. of Spain, and this circumstance profoundly affected the future of South Africa. For the Netherlands were now engaged in their famous struggle against Philip, and the port
1580. of Lisbon was closed against their ships. This led the Dutch East India Company to carry the war into the Indies themselves, where they obtained a complete mastery of the spice islands and a firm footing in India. Their eastern supremacy, however, was soon challenged. The British East India Company,
1600. incorporated in 1600, acquired Bombay in
1668. 1668, and began to push the Dutch out of India. In the spice islands the Dutch held
1700. their own, but from 1700 onwards they yielded their hold of India to the British.

Importance of Table Bay.

Thus during most of the seventeenth century, both Britain and Holland were rivals for the eastern trade, and had an equal interest in the various midway ports. One of these was far more important than the rest. Fresh water was obtainable at St. Helena or Algoa Bay, and shelter at Saldhana Bay, but the Cape Peninsula alone with its two inlets on either side of the isthmus joining it to the mainland, presented all the advantages—actual or potential—required in a port of call. Nowhere else could a station be established by a European power where its vessels

might water and refresh their crews, and whence they might attack the eastern commerce of a hostile country. Many a captain as he saw Table Mountain rising like a milestone on the southern horizon must have seen also that whoever held the harbours at its feet had grasped the keys of the eastern world. Indeed in 1620 the enterprising captains of two East India-men, in a proclamation dated from Saldhana Bay, actually annexed Table Bay to the British dominions; but the East India Company, resolutely set at this time against any acquisition of territory, refused to confirm their act by occupying the peninsula.

Attempted annexation of Table Bay by English captains, 1620.

The lost opportunity was soon seized by others. In 1651 the Dutch East India Company established a station in Table Bay, and placed agents there to grow vegetables for the ships, and to barter for cattle with the Hottentots. For another thirty years England was constantly at war with Holland, but the English Company never attempted to wrest the settlement from the Dutch. They were still endeavouring to avoid the burdens of government, and to confine themselves to trade. But eventually the appearance upon the scene of a new competitor drove them to a more aggressive policy. In 1675 France seized and fortified Pondicherry, and began to dispute with England the supremacy of the east. The English Company were compelled in self-defence to acquire territory in India, but it was a long time before the effects of the

Occupation of Table Bay by Dutch East India Company, 1651.

1684.

1675.

change were felt in Africa. During the hundred years which followed, England was at peace with Holland, and contented herself with holding St. Helena, and with the hospitality of the Dutch in Table Bay. It was not till 1781 that England, who was then at war with both Holland and France, attempted and failed to seize the Cape. In this attempt she was striking less at Holland than at France, with whom she was now entering on her last titanic struggle for the sovereignty of America as well as of the Indies. By 1795 Holland had been actually absorbed by France, and England seized the Cape to save it from passing into the hands of her powerful enemy. She has retained it ever since, except for a short time after the peace of Amiens when it was returned to Holland, only to be reoccupied as soon as the war with France was renewed. In 1814 it was ceded in perpetuity to England.

1781.

First annexation by Great Britain, 1795.

1803.

1806.

Final acquisition in 1814.

We may now return to trace the history of the colony itself from its foundation. It was at first thought that there was land enough for the purposes of the Dutch East India Company in the peninsula itself; and it was proposed to confine the settlement within those limits and to protect its northern face against cattle-thieves, by cutting a canal or raising a line of redoubts across the isthmus. Here at the outset of South African history we meet with the first attempt to make good the lack of a natural barrier between civilisation

Proposals for first scientific frontier.

and barbarism by erecting a military or political fence. The attempt has been made again and again, and has failed as often as it was made; until after more than two centuries the frontiers of Anglo-Dutch occupation met those of other civilised powers, who were competent to secure the maintenance of order on their side of the line. There now remains no foot of South African soil south of the Equator which is not included within the sphere of influence of some civilised power.

No scientific frontier needed against Cape natives.

If the Drakenstein mountains, which rise on the mainland beyond the isthmus, had been held by the warlike Bantu, the projected canal or redoubts would certainly have been constructed, and might have remained for some time at least the frontier of civilisation. But the administrators of the settlement did not find the Hottentots or even the Bushmen so formidable as to justify the cost of such defences. Moreover the settlers imported by the Company to raise fresh produce for the fleets speedily extended their farming from the peninsula to the mainland. As early as 1700 they and their descendants had founded Stellenbosch and settled the Tulbagh basin; and the idea of creating a scientific frontier for white colonisation by blocking the isthmus, now far behind them, was finally abandoned.

1700.

Rapid extension of the area of settlement.

As soon as the settlers began to take an interest in the country for its own sake, their views and those of the directors of the Company in Holland began to

diverge. The Company had been organised to make a profit by trade with India and the east, and not to found colonies; and to its directors the settlement was chiefly important as a post on their line of communication. If it was exposed to hostile attacks from savage tribes on the mainland, it was in their interest that the frontier line should be short, and therefore easy to defend. But the settlers had begun to think of the country as their home; and as they became absorbed in farming they lost interest in the Company's traffic between the east and west, except in so far as the visits of the ships afforded a market for their produce. To their children born on the soil, who had never served in the fleets or establishments of the Company, the land counted for everything and the interests of the Company for very little. As the need for land increased with their increasing numbers, they took more and more of it, often without troubling to apply either for the leave or protection of the Company. In less than a hundred years from the foundation of Cape Town, the farmers had penetrated to Oliphants river on the north-west, and to Mossel Bay along the southern coast. In the interior there existed no definite frontier, but to the north-east the farmers were already pasturing their cattle between the Langebergen and the Zwartbergen mountains. So far they had advanced by 1750 without meeting anything in the shape of organised opposition from the natives.

Extension of settlement to Oliphants river and Mossel Bay and the region of Graaff-Reinet, 1750.

First effective opposition offered by Bantu on the east.

A glance at the map will suggest an explanation why the white men's progress was so long unchecked. The prolific negro races of tropical Africa found the outlet which they needed in the empty spaces of the south. But in moving south the strongest tribes, who had all the width of Africa before them, where to choose, naturally sought the land and climate most congenial to their tastes. They turned aside from the deserts of the Kalahari in the west, and from the biting winds and frosts of the high veld in the centre, and swarmed down the narrow belt of warm country on the east, which lies between the Drakensberg and the sea. This eastern lowland was fertile and well-watered and therefore fitted for the dense settlement, which primitive tribes require in order to maintain the powerful fighting order, that is necessary to their existence. Gradually the intruders pressed their way south as far as Algoa Bay. But beyond Algoa Bay to the west, and stretching almost to the Atlantic coast, lay the Karoo desert, where lack of water made dense settlement and powerful organisation impossible. This unattractive country was left to a scanty population of Hottentots, Bushmen and other inferior races. These were the first to come into contact with the white immigrants, and they were quite unable to offer resistance to their advance. It was only when the farmers began to drive their cattle into the regions beyond Mossel Bay, that they found themselves confronted by the vanguard of the powerful

CHAP. I.

Bantu tribes. At that point the white invaders from the south-west and the black invaders from the north at length met.

Conflict with Bantu leads to first definition of eastern frontier.

When this happened, and the frontiers began to be a source of serious trouble, the Company for the first time bethought themselves to define them. There was by this time no question of drawing a line across the isthmus which could be maintained under the eye of the Cape authorities; for the scene of action lay far in the interior, hundreds of miles from the seat of government.

1770.

In 1770 the first eastern frontier was fixed at the mouth of the Gamtoos river on the south coast, 36 miles west of Algoa Bay. Thence after following the river for some way the line was drawn to the north-east, to Bruintjeshoek mountains, near Graaff-Reinet.

1775.

Only five years later, however, the boundary was pushed out to the Fish river far to the east of Algoa Bay; and in 1778 Governor Van Plettenberg erected a beacon at Colesberg—which is still preserved on the farm Quaggafontein—to mark the northern limit.

Definition of northern frontier, 1778.

First Kaffir war, 1779.

This extension of boundaries soon led to trouble. The farmers found themselves for the first time in direct contact with the Xosas, who crossed the Fish river in 1779, and began lifting their cattle. This incursion led to the first of a long series of Kaffir wars, which were destined to last for over a century.

Second Kaffir war, 1793.

In 1793 a second Kaffir war occurred, but its course was affected by greater events. The

French Revolution swept Holland together with France into war with England; and for the next twenty years Europe was a battle-field, and its governments had small leisure to consider the frontiers of civilisation in South Africa. The Dutch administrators at the Cape were for peace at any price, and the Kaffirs were allowed to remain undisturbed on the western side of the Fish river. Two years later in 1795 the Cape capitulated to General Craig. During the period from 1795 to 1815 while the colony was changing and rechanging hands between Holland and England, white settlement seems to have extended on the west coast to the Buffalo river just south of Port Nolloth. From this point its frontier ran south-east along the course of the Zak river to the Nieuwveld bergen, and from there north-east to Colesberg, and thence through the Stormberg mountains to the Baviaan river and down the Fish river to the sea. In 1811 the British Government drove back the Xosas and established posts along the Fish river. Troubles continued to recur, however, till in 1818 the fourth Kaffir war broke out, with the result that in 1819 the country from the Fish river to the Keiskama river was made neutral ground to serve as a buffer between British territory and the native tribes to the north-east. In 1825, however, part of this territory was annexed to the Cape Colony, and in 1831 grants of land were made to settlers. Then the troubles between the white farmers and the natives

Area of white settlement from 1795 to 1815.

Third Kaffir war, 1811.

Fourth Kaffir war, 1818.

1819.

1825.

1831.

CHAP. I.

1834.

were renewed, till in 1834 the Gaikas and Xosas invaded the colony and laid waste the whole country as far as Algoa Bay.

Fifth Kaffir war, 1834.

In the fifth Kaffir war which followed the natives were driven back past the Fish river, and the Keiskama river, and eventually beyond the Kei river which reaches the sea sixty miles to the north-east of the present site of King William's Town. The conquered country between the Keiskama and the Kei was annexed to the British dominions, made into a new province, and named after Queen Adelaide.

Reversal of its results by Lord Glenelg, 1835.

But these results were undone by Lord Glenelg, who ordered that the new province should be evacuated, and the old boundary re-established on the Keiskama river. The white settlers who had taken up land east of the Fish river, were turned out, and the territory between the Fish river and the Keiskama was handed back to native occupation, and in great measure made subject to native control. These measures roused the farmers, who were already exasperated at the methods adopted for the termination of slavery, to such a pitch of discontent, that a number of them retreated beyond the limits of the colony to the north. But this event is so important a landmark in the history of the colony as to require further notice hereafter: our immediate business is to trace the extension of the eastern boundary of the Cape Colony.

The great trek.

Sixth Kaffir war 1846 resulting in definition of boundaries.

In 1846 a sixth Kaffir war compelled the British Government to bring once more under

effective administration the country as far as the Keiskama river. The whole boundary of the colony was simultaneously defined. The frontiers were now drawn along the Keiskama river across the Stormberg mountains to the source of the Kraai river, thence to its junction with the Orange river, and thence along the Orange river to the sea on the west coast.

1847. The territory between the Keiskama and the Kei, which had been abandoned by Lord Glenelg, was vested in the Crown under the name of Kaffraria, but the Xosas were permitted to occupy it under the control of the Cape Governor. This is the first instance of a native territory directly administered by Great Britain, examples of which are to be found in Basutoland and the native protectorates which exist to-day.

Seventh Kaffir war, 1850. But the settlement of 1847 was of very temporary effect. The seventh Kaffir war, breaking out in 1850, resulted in 1853 in the establishment of Kaffraria as a Crown colony.

1853. In 1858 the eighth Kaffir war broke out. Apprehensions of the moral effect which the Indian mutiny might have on the natives, led the British Government to take the aggressive, and to drive the Xosas and their chief Kreli beyond the Bashee river. The territory beyond the Kei river, however, was treated for the time being as neutral. In 1865 Kaffraria was annexed to the Cape Colony.

Eighth Kaffir war, 1858. Annexation of Kaffraria to Cape Colony, 1865.

1865. After a ninth Kaffir war in 1877-1878 the country was annexed up to the Bashee river,

Ninth Kaffir war, 1877.

and a protectorate extended even as far as the Umtata river.

Pondoland.

1862.

Beyond the Umtata river lay the Pondo country. In 1862 the British Government had accepted from the chief Faku the inland part of this country below the Drakensberg;

Griqualand East annexed in 1879.

and the Griquas, a people of mixed descent, who had been dislodged by the emigrant farmers from territories north of the Orange river, had been settled there. In 1879 Griqualand East, as it was then called, and in 1885

1885.

all the coast country as far as the Umtata river, were added to the Cape Colony. Further native disturbances led to the absorption of

1894.

all the rest of Pondoland by the Cape in 1894 with the exception of the Alfred district, which had already been added to Natal.

Basutoland annexed to Cape Colony, 1871.

In the meantime the Basutos, a mixed community composed of Zulu refugees and others, who occupied the mountains north-west of Griqualand East, had come into conflict with the Orange Free State, the new community which had sprung into existence beyond the Orange river. The Basutos sought the protection of the British Government, and their appeal resulted in the treaty of Aliwal North,

1869.

signed in 1869, by which Basutoland was divided into two parts, of which one was incorporated in the Free State and the other declared British territory. By the same document the eastern frontier of the Free

1871.

State was defined. Two years later Basutoland was added to the Cape Colony, but, as we shall see shortly, was subsequently separated.

Up to the year 1853 the Cape was governed as a Crown Colony. By letters patent dated May 23, 1850, the Governor in Council was empowered to enact an ordinance for the establishment of an elective legislature, and this was brought into existence three years later. Seventeen years later a further advance was made. By an Act of the colonial legislature passed in the session of 1872 the system of responsible government, that is the conduct of the executive government by the advice of ministers, responsible to the local parliament, was created; and the Queen assented to the measure by an order-in-council dated August 9, 1872. In November, 1872, the first responsible ministry assumed the government of the Cape Colony including Basutoland.

Present constitution of Cape Colony.

1850.

1872.

We have now followed the gradual extension of the interior frontiers of the Cape Colony to their fullest limits. The next step in the argument is to consider the consequences of the great trek of 1836-1838. In order to understand this movement we must revert for a moment to the earlier days of Dutch settlement. When the first white colonists established themselves in South Africa, fresh land was open to settlement as they required it, and their families began to increase rapidly. The expansion of colonisation did not trouble the government at Cape Town until it brought them into conflict with the tribes of the east; but as soon as this happened, they endeavoured to discourage settlement and to

Establishment of the Natal republic by the emigrant farmers, 1838.

restrict their frontiers upon that side as far as possible. The British Government, like their predecessors, were anxious to avoid Kaffir wars, but probably a stronger influence was the conviction, which possessed the Colonial Secretary, Lord Glenelg, that the country belonged of right to the natives. The upshot —as we have seen—was that the eastern advance of white settlement was checked. Nevertheless the demand for land remained strong as ever, and the advance of settlement was now forced in a northerly direction. But by this time land had been taken up as far as the Orange river and even beyond it; and the trek boers, whose habits and instincts were all in favour of a sparse style of settlement, had to travel far to the north to find living room. The dissatisfaction, already noticed, which the slave question and Lord Glenelg's native predilections had aroused also tended to drive them as far afield as possible. Hence it was that white settlement, which had spread hitherto like the margin of a rising lake, held back to the east by the native tribes who occupied the land between the great mountain ranges and the sea, now overflowed to the north and poured in a steady and continuous stream across the Orange river, and even across the Vaal, and finally eastward to Natal. The latter movement brought it into sharp collision with the Bantu tribes, who had established themselves along the east coast. After several disasters the Boer emigrants

were victorious. In 1838 they felt sufficiently secure to establish a republic at Pietermaritzburg, repudiating British sovereignty, and claiming possession of the whole of the east coast from St. Lucia Bay to the Umzimkulu river near Pondoland. 1838.

British occupation of Durban 1843 leading to establishment of Natal as a British Colony.

As we have seen the command of the South African coast was essential to the safety of the British trade route to India. An attempt made by Lieut. Farewell of the British Navy to found a settlement in 1824 eventually failed; but the appearance of a Netherlands ship at Durban in 1843 induced Sir George Napier, the Governor of the Cape, to occupy that port, and to annex Natal to the Cape Colony. After a short opposition some of the Boers withdrew across the Drakensberg, whilst others accepted the British rule. The northern frontiers were fixed at the Tugela and Buffalo rivers on the north-east and the great Drakensberg range on the north-west. But Natal's distance and isolation from the Cape Colony made it inevitable that its local affairs should be separately administered, and in 1856 it was formally granted the status of a separate colony. It must be remembered, however, that the colonies of those days were no more than subject provinces, for before the days of self-governing institutions the Imperial authority was responsible for all the duties of government in South Africa. If disorders broke out, whether in the Cape Colony or Natal, there were British troops at the Cape to repress them.

Boundaries of Natal.

1856.

Natal, however, had still to consolidate her borders. On the south-west she obtained in 1866 a cession of territory from the Pondo chief, Faku, which fixed the Umzimkulu and Umtamvuna rivers as her boundary with the Cape Colony. In Zululand on the north-eastern border, the experiences of the Cape Colony with the native tribes were repeated. The Zulu war broke out in 1879 and ended by the removal of the chief Cetewayo to the Cape Colony. A British resident was appointed, but the actual government of the territory was left in the hands of several independent chiefs until 1882, when it was restored in part to Cetewayo. On his death, in 1884, some burghers from the Transvaal helped Dinizulu, his son, to conquer his rival, Usibebu, and received in recognition of their services a gift of the territories of Utrecht and Vryheid, where they proceeded to set up a separate government under the name of the New Republic. In 1887 the Imperial Government recognised the New Republic (which was afterwards incorporated in the Transvaal), but annexed the remainder of Zululand. This was followed in 1895 by the further annexation of Amatongaland, which lies north of Zululand between Swaziland, Portuguese territory, and the sea. Up to 1897 these territories were administered by the Imperial Government on lines similar to those followed in Basutoland. In that year, however, this policy was abandoned, and Zululand was added to Natal just as the Transkeian territories had been added to the Cape Colony.

Settlement of Cape-Natal boundary, 1866.

Zulu war, 1879.

Restoration of Cetewayo, 1882. His death, 1884.

Recognition of New Republic and annexation of Zululand in 1887.

Annexation of Amatongaland, 1895.

Addition of Zululand and Amatongaland to Natal, 1897.

In 1902, after the second Boer war, the districts of Utrecht and Vryheid were detached from the Transvaal and included in Natal. The existence of Natal as a separate and self-governing State is thus seen to be one of the direct consequences of the great trek. The presence of a white community there was itself the result of the natural expansion of settlement; and Great Britain only asserted sovereignty over it, because she could not allow a port on the road to India to come under the influence of a continental power. So far as possible she restricted the growth of the new territory. In the vast wall of the Drakensberg on the west, she found and adopted the one natural frontier in South Africa; and on the north-east she took the Tugela and Buffalo rivers as being the best boundary available. But just as in the Cape Colony, she found herself drawn further and further along the eastern coast, without possibility of stopping, until finally her borders met the southern frontier of Portuguese East Africa, which had been fixed by arbitration in 1875.

Also Utrecht and Vryheid, 1902.

1875.

Present constitution of Natal settled, 1893.

The Constitution Act of 1893, which established responsible government in Natal, received the royal assent on June 26, 1893, and on October 10 of the same year the first ministry was appointed. But the powers of self-government accorded by this constitution were subjected to a most important limitation, contained in the royal instructions to

the Governor of Natal, issued on July 20, 1893:—

> "VI. Before exercising the powers of supreme chief other than those by law vested in the Governor-in-Council, the Governor shall acquaint his ministers with the action which he proposes to take, and as far as may be possible, shall arrange with them as to the course of action to be taken. The ultimate decision must, however, in every case, rest with the Governor."

The effect of this provision of the constitution is that whatever powers are vested in the Governor as supreme chief in relation to the native population can be exercised by him, not as the mouthpiece of the people of Natal, but as the agent of the Imperial Government, which is responsible only to the parliament and people of the United Kingdom. Moreover, a salary of £600 per annum is reserved for the Under-Secretary for Native Affairs, and a sum of £10,000 is similarly reserved for the promotion of the welfare and education of the natives; that is to say these sums are disbursed out of the public revenue of Natal independently of any vote of the Natal Parliament and in a manner not subject to its control. Natal has not been given the same free hand in dealing with her native population as the Cape Colony enjoys.

Ord. No. 14 of 1893, § 52.

Conflict of native States and emigrant farmers leading to annexation of Orange River Sovereignty in 1848.

We must now turn back to follow the fortunes of the voortrekkers who went north. Although British subjects were streaming into the no-man's land across the Orange river, and fighting one another as well as the natives,

Great Britain struggled hard to divest herself of responsibility for maintaining order beyond that line. But she found it impossible to shut her eyes entirely to the consequences that ensued when settlers were pouring into a country destitute of law or government; and in 1836 the Imperial Parliament passed an Act empowering the Cape colonial courts to deal with offences committed by British subjects south of parallel 25°, which runs through Lydenburg and the Springbok flats, north of Pretoria. About the same time treaties were also made affording protection to three native chiefs north of the Orange river—Waterboer, who ruled the Griquas in the country round Kimberley, Adam Kok, chief of another Griqua community to the east of that region, and Moshesh, paramount chief of the Basutos. But conflicts arose between the emigrants and the protected chiefs, and the Imperial Government was compelled to intervene. In 1848, Sir Harry Smith, Governor of the Cape, annexed the wide region between the Orange and the Vaal rivers. This was created a separate province, distinct from the Cape, but subject to the authority of the Cape Governor, under the title of the Orange River Sovereignty.

Cape of Good Hope Punishment Act, 1836.

Annexation of Orange River Sovereignty, 1848.

Four years later by the Sand River Convention the Imperial Government formally renounced any claim to sovereignty north of the Vaal river; and by this act it adopted as its northern limit the frontier which to-day divides the Transvaal from the Orange River

Sand River Convention recognising independence of emigrants beyond the Vaal, 1852.

Colony. The country which is now the Transvaal, was left in the hands of a number of ill-defined district governments, which in 1858 eventually amalgamated into one republic under President Pretorius. Thus for the first time there appeared in South Africa a European State independent of the British Crown. It was not long, however, before Great Britain repented the advance made in 1848, and in 1854 by the Bloemfontein Convention, she renounced her sovereignty over the country between the Orange and Vaal rivers, and left the inhabitants to establish a republic for themselves, under the name of the Orange Free State. Pretorius who was simultaneously President of both the Transvaal and Orange Free State republics, made fruitless endeavours to unite them. Upon the subsequent history of the republics it is only necessary to touch so far as it concerns the question of boundaries, and of constitution. The annexation of the Transvaal by Great Britain in 1877 was followed by its retrocession in 1881. The convention of that year, superseded by that of 1884, fixed the frontiers of the northern republic substantially as they now appear on the map, and restored to it much of the territory lost by the Keate award; of which mention will be made hereafter.

1858.

Independence of Orange Free State recognised, 1854.

Annexation of Transvaal, 1877, and retrocession 1881, resulting in definition of frontiers.

In October, 1899, war broke out between the Imperial Government and the two republics, and was terminated by the terms of Vereeniging signed on May 31, 1902. By these terms the territories of both became colonies

Present constitution of the Transvaal.

of the British Crown, and the Imperial Government undertook to introduce a civil government in them at the earliest possible date, and as soon as circumstances permitted, to call into existence representative institutions as a preliminary to self-government. We must now see how this obligation was discharged.

For some time the two new territories were administered as crown colonies. In 1903 legislative councils were constituted in each of them, upon the usual crown colony model, consisting partly of official and partly of unofficial members, the officials being in the majority. The administration was carried on in each colony by a Lieutenant-Governor with an executive council, under one Governor for both. In the Transvaal responsible government was called into existence by letters patent issued on December 6, 1906. The power of the legislature to pass laws is limited in respect of certain specified matters by a provision that the operation of such laws is to be suspended pending the signification in the colony of His Majesty's pleasure thereupon. The particular matters thus reserved are:—

(a) Laws subjecting non-Europeans as such to particular disabilities.

(b) Laws repealing or altering the constitution.

(c) Laws providing for the introduction of indentured labour from places beyond South Africa.

The Governor was appointed supreme chief, though his powers as such over the natives are inferior to those of the Governor in Natal. The administration of the British settlers was also placed under his control for five years. In other respects the terms of the constitution were drawn up on the ordinary colonial model.

Present constitution of Orange River Colony.

In the Orange River Colony responsible government was established on similar lines by letters patent dated June 5, 1907.

The Inter-Colonial Council.

Any comparison at the present time between the functions of the governments of the four self-governing colonies is complicated by the arrangements between the Transvaal and the Orange River Colony originating in the institution of the Inter-Colonial Council. This body was appointed to administer jointly the railways, the police and sundry minor services, as well as the guaranteed loan of £35,000,000, as may be seen by reference to Statement No. II. This body has now been dissolved and the liability for the loan has been divided; but the railways are administered as before under a joint committee of the two governments.

Statement No. II.

Extension of Cape territory beyond Orange river.

We are now in a position to trace the events which fixed the western frontiers of the Orange Free State and the Transvaal, and also the boundary of the Cape Colony to the north-west. In 1870 and 1871 diamonds were found in the bed of the Vaal river near its confluence with the Orange river, and then in greater quantities at the present site of the Kimberley mines. Thereupon Nicolas Water-

1870.

boer, the Griqua chief, and the government of the Orange Free State asserted rival claims to the diamond fields which now centre round Kimberley. North of this large area west of the Makwasi spruit between the Vaal and Molopo rivers, was claimed by the Transvaal on the one side and by Waterboer, and the Batlapin, Barolong and Bangwaketsi chiefs on the other. This latter dispute was decided against the Transvaal in 1871 by Mr. Keate, the Lieutenant-Governor of Natal. Nearly all the territory in question was restored to the Transvaal by the conventions of 1881 and 1884. None the less the Keate award was one of the cardinal facts in South African history, because it kept open the road to the north, by means of which Rhodes was able to save the territories between the Limpopo and Lake Tanganyika from absorption by Portugal, the Congo Free State or Germany. In the same year on the invitation of Waterboer, Griqualand West was annexed and proclaimed a crown colony. In the annexation was included the valuable territory claimed by the Orange Free State, but in 1876 this question was settled by Great Britain paying to the republic the sum of £90,000. In 1877 Griqualand West was added to the Cape Colony. Here matters rested till 1884 and 1885, when two petty republics, called Stellaland and Goschenland, were formed by Transvaalers in the vacant area known as Bechuanaland, which lay beyond the west border of the Transvaal and north of Griqualand West.

Keate award, 1871.

1871.

Settlement with Orange Free State, 1876.

Inclusion of Griqualand West in Cape Colony, 1877.

Disturbances arose between the Boer emigrants and the natives, and the Transvaal proposed to annex the Baralong country. Great Britain, however, resisted the claim on the ground that the London Convention of 1884 placed all natives resident beyond the Transvaal frontiers under her control, and sent Sir Charles Warren to enforce the western boundary as defined by the convention. The boundary was beaconed off; the two small republics were abolished; and a British protectorate was proclaimed over the country in question. A year later the portion south of the Molopo river was constituted a crown colony under the name of British Bechuanaland, and in 1895 it was added to the Cape Colony.

Inclusion of southern portion of Bechuanaland in Cape Colony, 1895.

How Germany obtained Damaraland in 1884.

Meanwhile a new power was entering upon the scene. Since the beginning of the nineteenth century the coast country north of the Orange river had been a field for British missionary enterprise; but in 1842 some Rhenish missionaries established themselves in Namaqualand and soon acquired a great influence.

1842.

In 1868 they appealed to the German Government for protection against native aggression, and their requests were submitted to the English Government, whose right of control over Namaqualand was then tacitly acknowledged. A British Commissioner was subsequently sent there, and in 1877 Sir Bartle Frere, the Governor of the Cape, recommended that all the coast country north of the Orange river up to the boundaries of Portuguese territory should be annexed. But the

1868.

1877.

British Government would only consent to annex Walfish Bay, the one natural harbour on the coast, which was accordingly taken possession of in 1878. In 1880 Germany again addressed England about the protection of her missionaries, and in reply Lord Granville repudiated any responsibility outside Walfish Bay. During the next three years similar representations were made by Germany and were met by the same definite denial of responsibility. The Cape Government were uneasy upon the subject and desired annexation; but they were not prepared to accept the conditions upon which the Imperial Government insisted, that the colony should bear the expense of the administration. Finally in 1883 a German trading expedition, under Herr Luderitz, landed at Angra Pequena, obtained a concession of a large tract of territory, and applied for the protection of the German Government, with the result that in 1884 a German protectorate was declared in spite of feeble opposition from the British Government. The Cape Government offered to undertake control as far as Walfish Bay, but it was then too late. The present boundaries of German South West Africa where they march with those of the Cape Colony, were defined in the Anglo-German Convention of 1890. Walfish Bay with a narrow margin of territory round it and all the islands along the coast were added to the Cape Colony though hundreds of miles of German territory lie between them and its nearest point. The boundary east and west

1878.
1880.
1883.
1884.
1890.

was defined in the treaty as the north bank of the Orange river, but the Germans dispute this definition and claim the centre of the stream as the dividing line.

Origin of Chartered Company.

This completes the story of the establishment of the four self-governing colonies within their present boundaries as separate States. Let us glance at the situation immediately beyond these frontiers, as it existed in 1885 by which date they were practically fixed. We have just seen that in the previous year a German protectorate had been established on the west coast, bounded by the Orange river on the south, the boundary of Portuguese West Africa about latitude 17° on the north, and by the Cape Colony and the Bechuanaland protectorate on the east. North of the Cape frontier Great Britain had proclaimed a protectorate up to latitude 22°, that line being chosen because it ran just north of the northern frontier of the Transvaal. East of the Transvaal and north of Natal the coast country was owned by Portugal up to latitude 11°. North of that parallel on the east coast the Germans were establishing themselves in the regions south of Zanzibar. There was no question of the Transvaal extending to the north because by the Convention of 1884 the Limpopo had been fixed as its northern boundary, but between the other powers concerned Britain, Germany and Portugal, no line had been drawn. For a while the vast interior opened up by Livingstone's explorations, much of which could be settled by white men, invited the enterprise of any of

them. Portugal indeed attempted to assert a claim to the huge interspace of country lying between her possessions on the east and on the west coasts of Africa, but it was evident that she lacked the strength to occupy or to administer it. To Germany also, hungering for colonial expansion, the absorption of the mid-continent between Damaraland and German East Africa, was an inviting prospect. Its realisation might have meant that there would be established north of the Limpopo a large European community leaning for its support on a powerful and militant Empire; and this would have dragged South Africa into the vortex of European politics. Rhodes saw the danger and provided the remedy. In 1888 he induced the Governor of 1888. the Cape to make a treaty with Lobengula, chief of the Matabele, affording him protection in return for a promise not to alienate any portion of his country without the cognisance of the British Government. In 1889 1889. operations for bringing the country within the sphere of British control were begun simultaneously from British Bechuanaland in the south and from the shores of Lake Tanganyika in the north. In October, 1889, the British South Africa Company received its charter to develop the country which lies north of Bechuanaland and of the Transvaal and west of Portuguese territory. No northern limit was fixed for the Company's operations. The Portuguese, who claimed to possess the whole space, offered some opposition; but the matter was settled in 1891 by the 1891.

Anglo-Portuguese Convention, which fixed the present boundaries of Portuguese West Africa from the Rovuma river on the north to Delagoa Bay on the south.

Matabele war, 1893.

In 1893 the Chartered Company, which had obtained certain concessions from Lobengula, found themselves involved in a quarrel with him that soon led to war. The result of the

Establishment of Southern Rhodesia, 1894.

fighting of 1894 was that the Company took over the country between the Limpopo and the Zambesi. The Matabeleland Order-in-Council placed it finally under their administration, and gave it the name of Southern Rhodesia.

Constitution of Southern Rhodesia.

This province is now governed by an administrator assisted by an executive council of not less than four members, all appointed by the Chartered Company, with the approval of the Secretary of State. The laws are enacted by a legislative council consisting of the administrator, seven nominees of the Company approved by the Secretary of State, and seven members elected by the registered voters. There is a resident commissioner appointed by the Secretary of State, who sits on both executive and legislative councils without a vote, to watch the administration on behalf of the High Commissioner. Ordinances become law when assented to by the High Commissioner. The elective element in the legislature is shortly to be increased.

North-Western Rhodesia, 1899.

North of the Zambesi treaties were made with various chiefs, and in 1899 the country

of Lewanika, paramount chief of the Barotse tribe, was placed under British protection, under the name of Barotseland, North-Western Rhodesia, the expenses of administration being guaranteed by the Chartered Company. The western boundary of this territory, where it marches with Portuguese West Africa, was defined in 1905 by the King of Italy acting as arbitrator. To the north it is bounded by the Congo Free State. To the east and north of this country a third province was organised under the name of North-Eastern Rhodesia. Its exact limits were defined for the first time in 1900 when it was placed under the Chartered Company.

North-Eastern Rhodesia, 1900.

Barotseland, North-Western Rhodesia, is administered by a resident commissioner under the direct supervision of the High Commissioner. North-Eastern Rhodesia on the other hand is administered by a resident commissioner, under the control of the Governor of Nyasaland, to whom the territory is more accessible than it is to the High Commissioner for South Africa. From a constitutional point of view the status of Rhodesia as a whole is not free from obscurity. The country was first declared a British sphere of influence, but its opening up was undertaken and paid for by the Chartered Company. It has never been declared a protectorate in express terms, but the orders-in-council constituting its three governments describe it as being "under the protection of Her Majesty the Queen." It

Government of North-Western and North-Eastern Rhodesia.

Status of Rhodesia doubtful.

CHAP. I.

has never been formally annexed to the British dominions like Basutoland, and therefore it seems that unappropriated rights in land do not vest in the Crown. But it is undoubtedly subject to the jurisdiction of the British Government, and the Company's powers and rights are exercised and enjoyed by virtue of the charter which they hold from the Crown.

Nyasaland.

Between North-Eastern Rhodesia and Lake Nyasa lies a strip of country where Livingstone established a series of mission stations between 1858 and 1864. In 1878 the African Lakes Company was formed to exploit this area, but both the Arab slave traders and the Portuguese opposed its operations. In 1889 Sir Harry Johnston, British Consul at Mozambique, arrived in the country, dealt with the Arabs, and made a series of treaties with various chiefs. These results were confirmed by the Anglo-Portuguese Convention of 1891, and in the following year a British protectorate was proclaimed over the country west and south of Lake Nyasa. Towards the funds required for these operations, the Chartered Company contributed £70,000. Nyasaland is administered by a Governor, who is directly subject to the instructions of the Secretary of State for the Colonies.

1858.

1878.

1889.

1891.

Nyasaland proclaimed a protectorate.

Government of Nyasaland.

Native protectorates.

We have now traced the growth of the external frontiers of British South Africa from the Cape of Good Hope to Lake Tanganyika, as well as that of most of the

internal frontiers between the different areas of government into which it has been broken up. There are a few patches of territory intervening between various South African States of which some account has yet to be given.

Basuto rebellion, 1880.

We have seen that in 1871 Basutoland was annexed to the Cape Colony. In 1880 and 1881 the natives rebelled owing to an attempt to disarm them. The Government of the Cape was not strong enough to reduce them to order, and in 1883 requested to be relieved of control. Basutoland was then detached from the Cape Colony, and brought under the direct control of the Imperial Government.

Basutoland separated from the Cape Colony, 1883.

Government of Basutoland.

It is now administered by a resident commissioner instructed by the High Commissioner for South Africa, in whose name laws are made by proclamation. The authority of the chiefs, who are subject to one paramount chief, is a recognised feature of its administration.

Swaziland.

Further to the north-east is Swaziland, another area like Basutoland itself, mountainous and peopled by tribes of the Bantu race. It is bordered on the north, west and south by the Transvaal, and on the east by Portuguese territory and Zululand. In 1843 the Swazis repudiated Zulu authority and established themselves in this asylum. Its boundaries were fixed in 1879 and 1880, during the British occupation of the Transvaal; and its independence was

1843.

1879.

1880.

guaranteed by the conventions of 1881 and 1884. In 1887 the chief Umbandine applied to the British Government for protection, which was refused; in 1889 he asked them to assent to the annexation of his country by the Transvaal, but they would not agree to more than a system of dual control: indeed in 1890, by the Swaziland Convention, they actually re-affirmed the independence of the territory. This position was re-considered, and in 1894 the country was placed under the protection of the South African Republic, which held a concession to collect all revenues due to the King of the Swazis, on the understanding that the territory itself was not to be incorporated with the Transvaal. All the rights in and over Swaziland held by the republican government, passed to Great Britain on the annexation of the Transvaal, and the Imperial Government then placed the administration of the country in the hands of the Governor of the new Transvaal colony. In 1906 when responsible government was granted, these rights and powers were transferred from the Governor of the Transvaal to the High Commissioner for South Africa, who now administers Swaziland through a resident commissioner.

1881 and 1884. 1887.

1889.

1890.

1894.

Government of Swaziland.

Swaziland's position is similar to that of Basutoland, but with two important points of difference. In the first place the country has never been annexed; and secondly multifarious rights over the land, and also trading,

grazing and mineral rights had been granted to private persons and corporations by the Swazi chief, while the Swazis were still treated as an independent nation. The character of these concessions, and the manner of their grant led to extraordinary complications, which a commission has laboured for years to unravel. The upshot of its work is that certain districts will be reserved for native occupation, and the rights of concession-holders over the remainder will be clearly defined.

Government of the Bechuanaland Protectorate.

The government of the Bechuanaland protectorate resembles that of Basutoland, except that there is no one paramount chief. Bechuanaland has never been formally annexed; but Lord Russell in the trial of the raiders in 1896 held that it was British territory for the purposes of the Foreign Enlistment Act. Mineral rights throughout the protectorate, and considerable allotments of land along the railway belong to the Chartered Company, and no further concessions can be granted without their consent.

Governors.

Before closing this account of the eleven different territories, we may mention the links which connect them with the Imperial Government. The four self-governing colonies are under Governors, appointed by the Crown though paid from colonial funds, who act as intermediaries between the Imperial Government and the government of the colony. The

Governor of Nyasaland supervises North-Eastern Rhodesia as well as his own protectorate.

Office of High Commissioner.

The High Commissioner for South Africa, who, under the original terms of his appointment, was the officer for the time being administering the government of the Cape, represents the Crown in all matters occurring in South Africa beyond the limits of the colonies properly so called. He is Governor of Basutoland; he supervises the affairs of the Bechuanaland protectorate and of Swaziland; and he exercises the control provided by order-in-council over the administration of the Chartered Company in Southern and North-Western Rhodesia.

His general functions.

The High Commissioner is empowered to invite the South African colonial governments to send representatives to conferences for the discussion of matters of common interest. But his principal function, that of advising the Imperial Government on matters which affect the political situation in South Africa as a whole, is not expressed in his commission, but is sanctioned by understanding and practice. The office of High Commissioner, which was formerly held by the Governor of the Cape Colony, was, by a commission dated October 6, 1900, vested in Lord Milner, at that time administrator of the Transvaal and the Orange River Colony, and by a similar commission, dated March 15,

1905, in Lord Selborne, who is also Governor of the Transvaal.

The reader who likes to consider his information in a compendious form, will find that the main particulars relating to the eleven different territories which have been described in the foregoing pages have been reduced to tabular form in Statement No. III.

CHAPTER II.

Internal Administrative Units.

CHAP. II.

Various kinds of administrative areas.

Each of the eleven colonies and protectorates described in the last chapter is subdivided for domestic purposes into many minor administrative units. Such units may serve one or more of several purposes—judicial, fiscal, electoral, police, educational, mining, public works, deeds' registration, and disease prevention may be mentioned as the most important. In addition to these there are municipal areas and other areas of local government, within the limits of which the State has delegated one or more of its duties to local authorities, partly or even mainly responsible to the local inhabitants.

Over-lapping of administrative areas.

Frequently the boundaries of these different units overlap, often because it is impossible for administrative reasons to make them coincide, but more often, it is feared, because government departments are prone to act without due reference to the action of other departments. The various sub-divisions of the country are far too numerous for any map to show them all clearly, and some of them are subject to alterations, so that it will be enough to notice those that are more permanent and fundamental in character.

Of all internal territorial units magisterial districts are the most important. They are also fiscal divisions, though in the Cape Colony the two are not always coincident. In other words South African administration proceeds upon the plan of dividing the country into a number of districts, and of placing each in charge of a general agent of government, who is a judicial as well as an administrative officer. In this respect its methods resemble those of India rather than those of England or the United States. As in India, they have had the effect of teaching the population to lean, over much perhaps, upon the local representative of government. The districts or divisions of a South African colony like many English counties are often named after the towns in which they centre, and where the magistrate resides; and in course of time they establish themselves in the minds of the inhabitants almost as firmly as though they were physical features of the country. Usually they are adopted also as the basis of the electoral constituencies. But in the Cape Colony electoral divisions can only be changed by the legislature, while fiscal divisions can be changed by the executive, and therefore the two have ceased in some instances to co-incide.

Magisterial districts.

Electoral divisions.

The importance of making the unit of government conform with natural conditions, can be seen from the interesting example of Natal. Her map parades certain internal areas, called counties, whose existence is

Arbitrary areas.

probably to be ascribed to the fact that the colony, when first occupied, was prematurely divided, before the experience necessary to show what districts would prove most convenient had been gained. The consequence is that these county divisions have fallen into disuse, and have been superseded for all practical purposes by magisterial districts with boundaries better suited to geographical conditions and popular convenience. The counties in fact survive mainly owing to certain provisions of the Natal Constitution which preserve them for parliamentary purposes.

Areas due to difference in character of population.

Some administrative areas are due to differences in the population rather than to physical features. The best example is that of the Transkeian territories, where the people are mostly natives in a primitive state of civilisation, and are necessarily subject to laws other than those which obtain through the rest of the colony.

Essential differences between colonial territories and minor administrative areas.

It is important to notice one essential point of difference between the magisterial districts, counties and other subsidiary units from the eleven colonies and protectorates into which South Africa is divided. The people in each of the minor units are amenable in all respects to the government of the larger area of which their unit is part. If the Cape parliament passes a law applicable to the whole of the Cape Colony, the courts and the government will exact obedience from every individual whether he be in the Transkei, British Bechuanaland or the Western Province. One legis-

lature is sovereign over all the minor units. But if the common interests of all South Africa require that a law uniform in its terms and in the manner of its administration should be made and enforced for the whole country, no authority at present exists legally competent to enact it, except the parliament of Great Britain, in which the people of South Africa are unrepresented.

Imperial government confines the exercise of legal sovereignty to matters which affect the Empire as a whole.

In theory the Imperial Government is sovereign over the whole of British South Africa; but in practice it never treats the sub-continent as one, except indeed in so far as is treats the Empire as one. Certain Imperial laws, such as the Foreign Enlistment Act, apply throughout British South Africa, exactly as they apply to every country within the limits of the British Empire. Similarly the Imperial Government guarantees the Imperial frontiers of South Africa from foreign aggression, precisely as it guarantees the Imperial frontiers of all British dominions in every part of the world. But it never governs nor legislates for British South Africa as a country, which requires in any respect one general law or administration over its whole extent; nor is it ever likely to do so except on one future occasion for the purpose of establishing for it a single national government, which action it will take only at the instance of the existing colonial governments. In the use of the authority, which in theory it possesses, the British Government is abstemious always, and acts on the principle

that, in matters which do not involve Imperial interests, South Africans must exercise sovereignty for themselves. For this reason it is a perfectly legitimate assumption for the practical student of South African politics to make that the people of South Africa are possessed of sovereignty in their own affairs, even though they have never combined to exercise it.

The agreement of a number of different governments is necessary to the exercise of sovereignty in South African affairs.

As things are, however, there exists no government in South Africa capable of acting for the country as a whole. It follows that in all matters which affect its common interests, any general action, which may be necessary, must be taken by eleven different governments. If, for instance, some cattle pest broke out in North-Eastern Rhodesia, a law might be put in motion for the enforcement of measures necessary to arrest its progress by the Governor of Nyasaland at the instance of the resident commissioner of North-Eastern Rhodesia, who is a servant of the Chartered Company. But the operation of the law would be confined within the boundaries of North-Eastern Rhodesia, and in order to extend it to Nyasaland it would require to be enacted afresh by the Governor of that protectorate. For North-Western Rhodesia it would have to be again enacted by the High Commissioner, at the instance of the administrator, who holds office under the Chartered Company. It would next have to be passed through the legislatures of Southern Rhodesia, the Transvaal, the Orange River

Colony, Natal and the Cape Colony. In the Bechuanaland Protectorate, Swaziland and Basutoland it might be brought into force by proclamation made by the High Commissioner. It might easily happen that apathy or delay on the part of intervening colonies or protectorates might jeopardise the interests of others further south, whose governments would have no legal power to command or to enforce the measures which their safety required.

The position summarised.

We may sum up the existing position by saying that the legal power to make and to administer laws for all South Africa is held in abeyance in the hands of the Imperial Government, which does not represent its people. The South African people have as yet created no government competent to assume sovereignty in matters which affect them as a whole, and to wield it on their behalf. To accomplish this is the object of national union.

PART II.

PRIMARY FUNCTIONS OF GOVERNMENT.

CHAPTER III.

Initial Classification.

Scope of this part.

In organized States the government, acting on behalf of the community as a whole, undertakes certain functions on the ground that it can discharge them better than individuals could for themselves, either singly or in concert. The second part of our enquiry will therefore be devoted to analysing the business which governments in South Africa have chosen to undertake. Beginning with those functions, which from their nature governments have no choice but to assume, it proceeds to those which in many States are left to individual enterprise.

Government implies the existence of a community, and a community implies the existence of law. Law is to society what gravity is to the solar system. But the law of man, unlike a physical principle, can be altered; and the first function of government arises from the fact that such changes in the law of society are subject to human direction and control. Chapter IV. is designed to indicate the effect of South African disunion on the growth and administration of law.

In order for a community to be preserved as a social unit, it must be defended from attack from without, from disruption from within, and from dissolution arising from general neglect to observe the law which unites it. Chapter V. shows how far the present governments in South Africa are qualified to fulfil the functions of defence, suppression of revolt and police.

Chapter VI. deals with the responsibility which rests upon the government in such a country as South Africa, to select and to arrange the human material of which its society is or may be composed: that is, it reviews the native and immigration policy of the various governments.

Chapter VII. discusses the improvement of society, in other words the action which government takes towards the conservation of the health, fortune and character of the population. In this chapter the various systems of public health, poor relief and education are described.

Chapter VIII. deals with communications, showing how government is concerned with shipping, harbours, railways, roads, posts, and telegraphs, and also the effect of disunion on the various services.

Chapter IX. examines the various activities of the State devoted to the promotion of industries under the headings of agriculture, fisheries, mining and manufactures.

In Chapter X. the conclusions arrived at in the last six chapters are summarised with a view to discovering the principle upon which primary functions of government should be divided between central and local governments in South Africa.

CHAPTER IV.

The Law.

CHAP. IV.

Diversity of law tends to impair feeling of national unity.

Nationality is the product of various causes. Community of race, language and religion all help to unite multitudes of men and to make them feel and act as one people. Second only to these in effectiveness is the habit of obedience to a uniform law. The recognition of the same principles and rules as governing men in their relation to each other goes almost as far to promote intercourse, sympathy, and the instinct of united action, as similarity of thought, speech and worship. If the courts of the Cape Colony, for instance, declared the law of contract to differ in any fundamental respect from the law of contract observed in the Transvaal, a serious obstacle would be created in the way of business relations between the two colonies. And the ill effects would go further. Out of the divergence of law and business methods there would gradually grow an antipathy which would tend to weaken the feeling of common nationality.

Multiplicity of legislatures necessarily produces diversity of statute law.

The last chapter traced the process which would be necessary in order to make a uniform law for South Africa. Even if each of the law-making authorities which now exist

were a single person, they would seldom enact identical laws except under the pressure of some immediate necessity. But as it is, the more important legislatures are not individuals but popular assemblies; and if the process by which such assemblies legislate, as described in a subsequent chapter, be considered, the practical difficulty of obtaining uniform legislation will be perceived. It is the exception rather than the rule for one legislature to make any conscious attempt to copy the work of its neighbours, and the result is seen in the extreme diversity of the statute laws of South Africa.

Spheres of local and national legislation distinguished.

Some idea of the matters which have formed the subject of legislation in the various colonies may be gathered by consulting the index to their statute-books. A glance will show that in many cases local differences in the law cause little or no inconvenience. If the law of one colony relating to inns or to shop hours is inferior to that of the other colonies, only its own inhabitants suffer, and the rest of South Africa is none the worse. In such matters where the effect is localised, it is best that each locality, which may have conditions peculiar to itself, should suit its own tastes. Not only will local needs be better served, but the energies of the central legislature will not be diverted from its proper concerns. But it is equally true that there are many matters in which the great diversity of statute law in the different

parts of South Africa is the source of infinite confusion and mischief.

No argument is needed to show what complications arise from the existence of several different laws in various parts of British South Africa on such subjects as marriage, insolvency, bills of exchange, or the attestation of documents. Many other examples of the inconvenience which this diversity occasions will appear in these pages and more especially in the course of the present chapter.

Difference in wording renders decisions in one colony useless for purpose of interpretation in another.

In addition to this, a waste of money and legal talent results from the duplication of statutes; for where two laws have the same purpose but differ in terms, rulings on the one offer little help to the interpretation of the other. The immigration laws of the Cape Colony and the Transvaal, for instance, are identical in policy, but are differently worded and arranged. Decisions of the supreme court at the Cape, therefore, cannot be used as a guide by the officers of the Transvaal, so that the results of proceedings which ought to be serviceable to the whole country are of no value beyond the limits of one colony.

First condition necessary to secure uniformity of law, establishment of national legislature.

The only cure for this state of affairs will be found in the creation of a single legislature, competent to legislate for the entire country in matters which affect it as a whole. But even this is insufficient. The law must not only be made, but must be applied on uniform lines; that is to say, machinery must

be provided which will secure that the law is uniformly interpreted. Hitherto we have spoken only of statute law, but an equally imimportant element in the legal system of a country is its body of common law. Now, at first sight the conditions of South Africa in this respect are favourable. All the colonies south of the Zambesi have started on a uniform basis. North of that line the English common law has recently been adopted, for reasons which it is difficult to appreciate, but south of it the Roman-Dutch law everywhere obtains in British territory. Nevertheless, the apparent advantage is being rapidly lost, because, as a matter of fact, the common law in the various colonies has already begun to diverge. To some extent this divergence is the result of legislation, which has superseded portions of the common law by statute law. A good example is the diverse treatment of *laesio enormis*. This doctrine of the Roman law enables the court to set aside a contract of sale, exchange, division or hire, in which one party receives twice the value obtained by the other; the idea being that the law cannot be made to support too unreasonable a bargain. The doctrine has been abolished by statute in the Cape Colony, but it endures in the Transvaal as part of the common law.

Uniformity in interpretation secured by a common court of appeal.

A more important and continuous cause of divergence is the different treatment which the common law has received at the hands of the different courts. In

theory the courts are confined to interpreting the statute law and the common law. But the decision of a principle of law in one case, until reversed either by a superior court or by the legislature, influences the decision in similar cases which may occur thereafter under the jurisdiction of the same government. In reality therefore the courts do not merely interpret, but actually mould, the laws —a fact recognised by the jurists who speak of judge-made laws in contrast with the statutes enacted by the legislature. Unfortunately judges are apt to interpret the same text in different ways, a fact which once led a peevish attorney-general to exclaim: "I can tell you what the law is, but what Her Majesty's judges will say it is, God only knows." It thus happens that the rulings of one court often conflict with those of another; but within one and the same State uniformity in case-law is secured by the establishment of superior courts, culminating in one supreme court of appeal, which in the last instance decides any conflict between the judgments of inferior courts.

Existing S.A. judiciary and its effects on law.

The complexity of the system of courts by which the laws of South Africa are now administered will be understood on reference to Statement No. IV., where the whole judicial machinery of the country is shown, and to Statement No. V., in which the jurisdiction of every court, original or appellate, is set forth. The former shows that a court of appeal exists within the limits of each colony in the

Statement No. IV.

Statement No. V.

form of a supreme court or a high court, to which disputed questions can be carried from the courts of inferior jurisdiction. Such a court, as we have said, ensures uniform interpretation of the law within each colony. But South Africa, as a whole, has no such single tribunal to keep its common law consistent; and therefore, in spite of its being originally identical, it is only to be expected, in the absence of a common court of appeal, that conflicting decisions of the supreme courts which administer justice in the respective colonies, will lead in time to serious divergence. Two striking examples will be sufficient to show how such divergences arise, and to what extent the common law may differ in two colonies, even in respect of principles which affect in the most fundamental manner the ordinary relations of business. In dealing with the law of contract the supreme court of the Cape Colony has held that the element of consideration is an essential part of contracts which can be enforced at law. The supreme court of the Transvaal has held, on the contrary, that the doctrine of consideration is no part of the Roman-Dutch law, and that all contracts or promises deliberately and seriously made for any reasonable cause can be enforced by the courts. Again, the courts of the Cape Colony have held that a lessee holding under a short lease can, without the consent of the lessor, transfer his liabilities under the lease by cession or assignment to third parties. The

supreme court of the Transvaal has held, on the contrary, that this is not the law, and that the lessee in such circumstances can only transfer his liability to a third party with the lessor's consent. Other instances might be given, but these serve to show that important and fundamental differences of law may arise between two colonies in South Africa, not by any act of the peoples concerned, but simply from the nature of the machinery which exists for the interpretation and application of the law in each.

Privy Council not intended to maintain uniformity in law of different colonies.

The sole means of securing that the various supreme courts shall interpret the same law uniformly for South Africa is provided by the right of appeal to the judicial committee of the Privy Council in England. Now, in the first place it will be apparent from the extent of the Privy Council's jurisdiction that its judicial committee was not constituted with the special object of securing uniformity in the laws of the many colonies for which it is the ultimate court of appeal. Australia, New Zealand, part of Canada, and the territories north of the Zambesi, observe the common law of England, while the law of French Canada is founded on the Roman law. Ceylon and British Guiana, like the greater part of South Africa, follow the Roman-Dutch law. In India, again, the English common law is recognised, but not to the exclusion of native law and custom, and the Privy Council may be called upon to determine issues arising under the latter. The truth is that the Privy

Council exists, not to preserve uniformity in Imperial law, but to secure to litigants dissatisfied with the findings of local courts in any part of the Empire, the privilege of appeal to a tribunal of paramount authority. It serves to maintain and to diffuse throughout the Empire traditions of exalted justice; and it stands for a symbol of Imperial unity.

nor adapted for doing so.

In the second place, though the Privy Council administers the same body of common law from the Zambesi to Cape Agulhas, and might, therefore, be supposed to exercise a unifying influence within these limits, yet as a matter of fact it is in no position to do so. In actual practice the expense of applying to a court 6,000 miles away is so great that few appeals are carried to it from South Africa, too few to secure the uniformity which ought to exist in the principles of law as applied by the different colonial courts. It still remains, therefore, for South Africa to establish for herself such a court of appeal as will secure harmony in the interpretation of her laws.

Example of India.

In this matter warning should be taken from the example of India. Some forty or fifty years ago uniformity was attained in the principal branches of Indian law, which were codified with immense labour. No single court of appeal, however, was established in India itself, and there are at present no less than nine different courts beyond which no appeals can be carried except to the judicial committee of the Privy Council in London.

The consequence is that different and inconsistent bodies of case-law have been growing up, and the uniformity originally provided by the codes is disappearing. In the case of the civil procedure code, indeed, the diversity is now so great that the eminent English lawyers who have attempted to grapple with it have long hesitated to undertake the task of re-codification.

Abortive attempt in the past to establish South African court of appeal in 1905.

This defect in the judicial system of South Africa is so patent that efforts have already been made to remove it. More than three years ago the matter was referred for consideration to the attorneys-general of the four principal colonies and Rhodesia, and although the report they made has led to no practical results, it is worth quoting at some length because it shows how difficult it is to attain unity in any particular department unless a national government is first created to undertake the task.

> We have the honour to report, each to his own Government, the conclusions we arrived at with regard to the establishment of a South African Court of Appeal, at a Conference held in Bloemfontein on the 9th and 10th of this month.
>
> The most opportune time for establishing such a Court would be undoubtedly when the different Colonies of South Africa are federated under a central Government, which would appoint the members of the Court and establish its domicile at the federal capital.
>
> In considering any scheme for the establishment of such a Court prior to federation, the disadvantage of not having one authority to appoint its members is apparent, and it is exceedingly difficult to suggest any proposal in that connection which is free from objection.
>
> A scheme was put before us for discussion, under which it was proposed that a Court of Appeal should be constituted of five members selected exclusively from judges of the Supreme Courts of the different Colonies

of South Africa, who would, after their appointment on the Court of Appeal, continue on the judicial establishments of which they were members, and would therefore be in the unenviable position of being both judges of appeal and judges of courts from whose judgments appeals would be heard. Their salaries as judges of Supreme Courts would, of course, continue to be paid by their own Governments; only such allowances as may be given them for attending the sittings of the Court of Appeal would be paid jointly by all the Governments.

The scheme further provided that the selection of the members of the Court of Appeal was to be made by the majority of the Governments who became parties to it, and all expenditure incurred in connection with such Court was to be met by equal contributions from such Governments.

The obvious and perhaps only argument in favour of this scheme is its economy; the objections to it are, however, so serious that we felt we could not recommend it to our respective Governments.

We fully recognise that it is impossible to have one authority to appoint members of a Court of Appeal established before the Colonies are federated under one central Government, and that each Government which is a party to its establishment may fairly claim a voice in such appointments. It does not appear to us, however, equitable that the expenditure incurred in connection with the establishment of the Court should be equally shared by the different Colonies, which must be the case if each Government is to have an equal voice in the appointment of the judges thereof. It is manifestly unfair to make the contribution of Rhodesia towards such expenditure the same as that of Cape Colony or the Transvaal, from which would come most of the work to be dealt with by such a Court. It appears to us clear that the expenditure should be fairly apportioned between the different Governments on an equitable basis, and that the voting power of each Government on all matters in connection with the establishment and working of the said Court, which have to be decided by the majority of the votes of the Governments, should be in proportion to its contribution.

The objections to limiting the selection of the members of the Court to judges of the Supreme Court of the different Colonies appear to us to be fatal to the scheme to which we have referred. It is quite possible that two of the judges of appeal may be members of the same Supreme Court. They would probably have to attend the sittings of the Appeal Court three or four times a year. Their absence from the Supreme Court

of which they are also members would seriously hamper the work of that Court, and would necessitate the appointment of acting judges to cope with it. It could not be expected that leaders of the Bar would take these acting appointments, for not only would the pecuniary sacrifice be too great, but the fact that they would probably have been consulted in most cases which would come before the court for hearing during the temporary absence of its two permanent members would disqualify them from taking part in such hearing.

In the event of an appeal from the decision of a Supreme Court, two of whose members are also members of the Court of Appeal, consisting, as the scheme proposed, of five members, the difficulties would be even greater than those we have referred to above. Such an appeal could only be heard by three members, for it is unreasonable to suppose that the two judges from whose judgment the appeal comes could take part in the hearing. We do not believe that the public would be satisfied in having the unanimous decision of a Supreme Court of three judges heard on appeal by three other judges of equal status. It appears to us to be absolutely necessary, if the Court of Appeal is to have the confidence of litigants, that an appeal from the judgment of a Supreme Court should be heard by the full Court of Appeal. It may be said that in any case where judges could not sit on an appeal from the decision of a Supreme Court, because they were parties to that decision, acting appointments could be made so as to make up the full strength of the Court of Appeal. We think such acting appointments would be most unsatisfactory; it would be difficult to find suitable men to take them; they would have to be made probably at every sitting of the Court, causing such frequent changes in its personnel as would impair its efficiency and destroy public confidence in it.

It was suggested that the above difficulties might be got over by constituting a Court of seven judges instead of five, all to be selected from members of judicial establishments in South Africa. It did not appear to the majority of us, however, that this amendment cured the defects of the scheme, or removed the fundamental objection which all of us had to judges of a Court of Appeal remaining judges of Courts from which appeals lie to it.

We are unanimously of opinion that if a Court of Appeal is to be established before federation, it should be established as far as possible on lines which would be followed were it established by a federal Government; and that it is essential that such a Court should consist of members who are judges of appeal only, and selected from the men in South Africa most competent to fill

such positions, whether they be on the Bench or at the Bar.

We have already pointed out that one of the difficulties of establishing such a Court before federation is that there is no one authority such as a federal Government to appoint the members thereof. We have come to the conclusion that the only way in which such appointments could be made before federation is by the majority of the votes of the different Governments. It would not, as we have previously mentioned, be fair that the contributions towards the expenses of such a Court should be equally divided between the different Colonies, nor would it be fair if the contributions are different that the voting power should be equal. The proportions in which we recommend that these contributions should be made, will be seen on reference to article *five* of the annexure, which we have arrived at roughly by the following reasoning: We considered that the strength of the judicial establishments of each Colony would be a fair indication of the amount of litigation in that Colony with which the Court of Appeal would have to deal, as well as its population and revenue. We thought on this basis that the Cape Colony and the Transvaal should contribute equally between them two-thirds of the expenditure of that Court, that the Government of Natal should contribute one-sixth, the Orange River Colony one-ninth, and Rhodesia one-eighteenth. In reducing this to a common denominator the proportions would be as follows: Cape Colony, twelve-thirty-sixths; Transvaal, twelve-thirty-sixths; Natal, six-thirty-sixths; Orange River Colony, four-thirty-sixths; Rhodesia, two-thirty-sixths.

After arriving at the above proportions it was felt by some of us that the contribution of Natal was not sufficient as compared with that of the Cape Colony and Transvaal, while the contribution of Rhodesia was too small in comparison with that of the Orange River Colony; it was then agreed to make the proportions those mentioned in article *five* of the annexure. We do not doubt but that a more equitable basis will be suggested on which these contributions should be calculated. We think, however, that in whatever proportions the Colonies contribute to the expenditure incurred in connection with the Court of Appeal, the voting power of each Government on all questions which have to be decided by a majority of the Governments should be proportionate to its contribution.

It is a question of some importance in dealing with the establishment of a Court of Appeal to decide from what Courts in each Colony appeals should lie to it. Some of us were strongly of the opinion that only

appeals from the Supreme Court of a Colony should be heard by the Court of Appeal; and that to allow a person to appeal from the Circuit Court of a Colony direct to the Court of Appeal, without going first to the Supreme Court of that Colony, would lower the status of the latter. There being a difference of opinion on this point, we came to the conclusion that it should be left to each Colony to decide by its own legislation from which of its Courts an appeal should lie to the Court of Appeal.

Dated this 26th day of January, 1905.

RICHARD SOLOMON (*Chairman*).
VICTOR SAMPSON.
G. A. DE ROQUEFEUIL-LABISTOUR.
H. F. BLAINE.
C. H. TREDGOLD.

It is scarcely necessary to add that the labours of the five attorneys-general were abortive, and that no action has ever been taken on their report.

Points for future consideration when establishing court of appeal for S.A.

So far we have endeavoured to show that if uniformity is to be secured in the case-law of South Africa there must be established one court of appeal in the country itself with jurisdiction over its entire area. There are certain subsidiary questions which deserve mention, although to attempt their answer is beyond the scope of the present enquiry. In the first place, should the South African court of appeal entirely take the place of the existing courts of appeal? If not, should litigants be allowed under any conditions to appeal straight to the Privy Council without carrying their case first of all to the South African court of appeal? Lastly, there is the question whether appeals should be allowed at all from the South African court of appeal to the Privy Council.

Whatever the solution of these problems may be, care must be taken to avoid the position created in Australia, where appeals in two cases, both involving the same point, were taken, one to the supreme court of the Commonwealth, the other to the Privy Council. The two courts arrived at opposite conclusions, and no provision existed for settling the point in dispute .The lesson is that one court or the other must be made paramount.

Executive functions of the courts. The legal professions.

The supreme courts of the different colonies, either directly or through the agency of officers controlled by them, exercise certain important executive functions, to which we have now to refer. The first of these is the business of admitting to the various branches of the legal profession persons desiring to practise law. In the exercise of this duty the courts are guided by the laws in force in the various colonies, and all are different. In Natal, for instance, the same person may practise as attorney and as advocate, but in the Cape Colony and the Transvaal the two branches of the profession are kept distinct. Sometimes admission to practise in one colony qualifies a man for admission in another; more often it does not. The intricate provisions governing these matters cover no less than 31 pages of the Legal Handbook of South Africa. No reasonable person can doubt that the law upon the subject should be unified, and that the duty of administering it should be imposed on one court supreme over all South Africa. Pro-

fessional skill is as much entitled to free trade within the frontiers of South Africa as agricultural produce, and a lawyer qualified to practise in one part of the country ought to be able to practise in any other.

Executive officers of the supreme court.

The two chief executive agents of the supreme courts are the sheriff and the master, offices which are often filled by one and the same person.

The sheriff.

The sheriff's duty is to provide juries and to execute orders of the court, though the latter function is, for the most part, actually performed through deputy sheriffs, whom the sheriff appoints and supervises.

The master.

The master of the supreme court sees that all wills are in order and are duly carried out. If an owner of property has died intestate he arranges for the distribution of the estate among the heirs according to the laws of the country. Incidentally he watches the interests of heirs and minors. Again, if an owner of property becomes bankrupt, the master supervises the working of the machinery for distributing the rights in his estate among the creditors. If the law is clear he acts on his own initiative, but it is his duty to see that every obscure point is brought up for decision by the court. His duties frequently lead him to obtain valuations of property, and he is for this reason the public officer entrusted with the work of granting certificates of competence to sworn appraisers. In some colonies the master, in his capacity of commissioner of protocols, also supervises the stamping and registration of deeds by

notaries: in others this duty is discharged by the magistrates, under the supervision of the supreme court.

All that has been said as to the advantages of one system of law and one central judicial machine applies equally to all these functions. It would be a clear gain to South Africa if all proceedings in execution, and all the business of administering the estates of deceased or insolvent persons were handled on uniform and consistent lines.

Rights Dependent on Registration.

Landed Rights.

Rights dependent upon government records.

We have seen how the settlement of personal rights may be regarded as the first of the primary functions of government, and how the laws and courts and executive officers of the courts are the principal parts of the machinery which it employs for this purpose. But closely connected with them are other agencies only less essential to the same object. These may be roughly classed together as registering officers. In the modern State there are certain classes of rights which derive their validity wholly or in part from some form of record for which government assumes responsibility. Marriage is a case in point; but as the registration of marriages has statistical significance and is usually connected for reasons of convenience with the record of

births and deaths it will be considered more fully when we are dealing with the question of population. For our present purpose the most important rights which the State undertakes to record are those of property in land.

The elements of land value.

In this book the word "land" is used in its legal sense, as including everything beneath its surface as well as the water and space above it. The value of any piece of land apart from its extent depends upon (i.) its position, (ii.) the capacity of its soil for producing vegetation, and (iii.) the minerals which can be extracted from it. Whatever is the natural capacity of the soil, its actual production depends on the amount of human skill and energy devoted to its development.

Certainty of tenure necessary to encourage production.

Nothing tends to paralyse the energies of producers more than uncertainty whether they will reap what they have sown. Accordingly, it is one of the first functions of civilised government to guarantee to each man the fruits of his own labour. The obvious way of doing this is to grant to individuals definite rights over definite portions of land. The legal system used for the purpose is effective exactly in so far as the rights which it establishes are clear and easily ascertained.

Costly system of land tenure in England depending on documents in private hands.

In older countries such as England, where the social system has developed slowly, without violent changes either by conquest or revolution, rights in land tend to become extremely complicated and difficult to discern. Every owner is himself responsible for maintaining his title to the rights which he claims,

and he must maintain them if challenged by producing evidence that they have been transmitted to him from a former owner, whose title the challenger cannot impeach. In England this requirement greatly increases the difficulty and expense of any dealing in landed property.

Land tenure in new countries depending on public registration a great improvement.

A new country starts its career with many advantages. It has behind it all the experience of the old world if it chooses to make use of it, and generally the first use it makes of it is to insist on a scientific definition of rights in land. Its method is somewhat as follows. Having equipped itself with a ready-made system of government it assumes boldly that the whole of the land in the country belongs to that government in the first instance. The government then initiates private rights in land by granting to particular individuals clear and exclusive rights over different portions of the surface which are indicated by beacons on the spot. It embodies these rights in a deed of grant; but, lest such a document should be tampered with and fabricated or otherwise abused, the government insists that its possession does not in itself complete the holder's title to the rights which it purports to confer until the document itself has been formally registered in a central office, and a duplicate copy has been filed there which any man may see. But the initial grant is only the simplest part of the entire business of securing landed title. The grant of complete ownership of course in-

cludes the right of transferring to another person the title granted, either in whole or in part, and either absolutely or conditionally —as, for instance, by hypothecating or pledging the land as a security for debt. Here, again, the government steps in and insists that such transfer or hypothecation shall be effected by a document which shall only be valid when recorded by the registrar of deeds. The law differs in many respects in the various colonies, but, generally speaking, registration is necessary to complete the title to any rights over land other than leases of shorter duration than ten years.

Accurate diagrams essential to land registration.

All the laws, however, agree in demanding that not merely are the nature and extent of the rights granted or transferred to be shown in the deed of grant or transfer, but also that the particular portion of land to which these rights apply, as indicated by beacons on the ground, shall also be shown on an accurate diagram, attached to the deed. Not only has the government to see, therefore, that the deed effectively carries out the transaction which it purports to record, but also that the diagram is accurately drawn and includes such mathematical data as will enable the exact position of the land to be determined in relation to adjacent portions. Sometimes new governments are careless or inexperienced enough to grant portions of land which have not been exactly located; with the result that one and the same piece of land may be granted to two persons, or on the contrary that the

land granted cannot be identified *in situ*. In Canada such inaccuracies have been the cause of extreme confusion, as will be seen in Lord Durham's famous report, and similar trouble is said to have occurred more recently in British East Africa. The history of the Swaziland concessions offers an example nearer home. Only the existence of an accurate register makes it possible to ascertain certainly, easily and cheaply what rights exist over land and in whom they are vested.

System of deeds registration in the various colonies.

We have now to see how the South African colonies have provided for this matter. According to the customs of Holland transfers of landed property had to be effected *coram lege loci;* and in the Cape Colony the original arrangement was for the registration of deeds to be similarly conducted by a judge of the supreme court. As the work increased, however, it came to be entrusted to separate officers who act on their own discretion, subject always to the liability that their decision may be tested before the courts, in which case they must obey the judicial decision. In matters of business it is often essential to ascertain the extent of a person's property in land, and for this reason among others there are certain evident advantages in arranging that all land within the jurisdiction of one government should be registered in a single office. Natal, the Transvaal and the Orange River Colony have each one central registry of deeds, although in the Transvaal, for reasons which are really historical, leasehold

Advantage of centralised registration.

townships in mining areas are registered in local offices, called the registries of mining rights. The Cape Colony, however, is divided into no less than four registration districts, each with its separate registry, situated at Cape Town, King William's Town, Vryburg and Kimberley respectively. The existence of so many offices is due to the fact that Kaffraria, British Bechuanaland and Griqualand West had each a registry of its own before its inclusion in the Cape Colony. The inconvenience, though not the extravagance, of this arrangement is partly mitigated by depositing for reference at the registry of deeds in Cape Town duplicates of all records filed in the provincial registries. The civil service commission which recently reviewed the public organisation of the Cape Colony recommended the abolition of the three provincial registries, but the Cape government appears to have decided that it would now lead to confusion to concentrate the record of all titles at Cape Town. If any proposal to centralise the deeds' registration of all South Africa in one capital is made, it will need to be considered in the light of the experience of the Cape Colony. It may well be the case that though uniformity of laws and methods can easily be attained, the balance of convenience will still lie on the side of allowing the actual documents to be filed in provincial depositories.

Plate No. II.

Mining Rights.

Conditions differentiating mining from agricultural industry.

The system of registration which we have just described applies to the ordinary rights of ownership in land. We must now consider the special system of tenure applied to mining rights, which equally depends on registration. When the principles of Roman and English law, upon which the ordinary system of land tenure rests, were in the making, farming values were the subject mainly in view. But in modern times, when the use of minerals as the raw material of wealth is continually increasing, young communities often find themselves confronted with a new problem. They are compelled to devise systems of land tenure which are specially adapted to develop the mining value of their land. To understand these we must appreciate how an industry which depends on the mineral products of land differs from one which depends on its vegetable products.

Scarcity of mineral deposits in workable quantities enhances their value.

It is true that certain soils and climates are more fitted to produce particular kinds of plants and animals than others. On the other hand, nearly every country can grow all its own provisions if it sets itself to do so; a man who took sufficient trouble could grow vines in England and hops in South Africa. With minerals it is otherwise; no amount of pains can extract minerals from land which does not contain them. Nature herself has defined the possibilities of mineral production, and it so happens that she has restricted them by providing minerals in workable quantities in

only a few isolated places. It follows that the value of such deposits is proportionate to their rarity.

Difficulty of finding such deposits further enhances their value.

In the next place, while organic products of land are raised upon its surface and the suitability of each soil for the different kinds of products can easily be learnt by experience, minerals have to be drawn from beneath the surface. In some cases they are sought thousands of feet below it. Their presence does not readily declare itself; they are either discovered by chance or more frequently by extensive and organised search, which is successful only after many failures. The cost of such searches operates to increase the value of the minerals.

Development exhausts mineral deposits.

A further point of difference is that soil is not exhausted, but improved by cultivation. A farmer who devotes money and labour to the working of his ground knows that its productive value is permanently increased thereby; but the more capital and work a miner spends on development, the more rapidly is his property exhausted, and if he is a miner and nothing more, he does not care if his title expires as soon as the minerals are worked out.

These conditions produce a system of mining rights differing from freehold tenure.

It is apparent, therefore, that where mineral values are in demand a government is faced by conditions which differ radically from those which have determined the definition of ordinary property in land. As a result, wherever the attention of a community is devoted to the mining values as opposed to

the farming values of land, we find a tendency to create an entirely different system of land tenure. In Cornwall and Derbyshire, the oldest mining districts in England, customs obtain (now codified in the form of statutes) which are quite foreign to the ordinary notions of ownership in land, and actually bear a curious resemblance to the mining laws of South Africa.

The search for minerals in South Africa stimulated by discovery of diamonds.

The latter, however, are quite an indigenous growth, and the history of their evolution is important and interesting. The highest kind of ownership granted under the Roman and Roman-Dutch law appropriates to the private holder all the values in the land in his possession. The original owners of the land now occupied by the Kimberley mines held it on ordinary freehold title, and as soon as the enormous value of their contents became apparent, steps were taken to determine whether such title gave the holders an exclusive right to the minerals. The Privy Council, finding nothing in the statute laws to the contrary, decided that the surface title included the mineral values; and its decision immediately placed the fortunate owners in possession of greater revenues than are enjoyed by the governments of some States. The fame of the diamond discoveries set an army of adventurers roving in search of minerals over the vacant lands of South Africa, and over private lands wherever the owners would allow prospecting; and thus a new situation was created for which provision had to be made.

Prospecting led to enactment of mining laws; first as applied to public land,

Just as in Europe the policy of encouraging cultivation begot absolute ownership, so in South Africa the policy of encouraging the discovery of minerals, especially of the rarer kinds, produced tenures of an entirely different character. It was necessary that the rights granted should be clear, easily transferable, and sufficient for the purpose of mining; but it was not necessary that they should be permanent. On the contrary, it was desirable that it should be made easy for the owner to vacate them, indeed, that he should find it difficult to retain them after he was no longer able or willing to make use of the land which they gave him. Laws were accordingly passed which authorised individuals to mark out for themselves portions of the public domain, and to hold them for mining purposes only, subject to the payment of certain fees, and prohibited mining upon public land except in accordance with these requirements.

next as applied to private land.

As minerals came to light, not merely on the public domain, but also on land in the possession of private owners, the same methods of dealing with them were applied with slight modifications. In the Transvaal, for instance, the State declared that the working and disposal of all precious minerals found on private lands belonged to it, and that these operations could be conducted only by its leave and subject to its control. It recognised the rights of the landowner by assigning to him a share of the licence fees which it exacted from claim-holders, and

afterwards by allowing him to reserve a certain portion of his land for mining on his own account. But it frankly abandoned the old idea, upon which the Privy Council had proceeded, that the owner had an absolute right to the minerals as well as to the other elements of value in his land; and it asserted its power to restrict the rights of owners over the minerals in their lands even where they had been granted on freehold terms.

Taxation of mining rights.

The original motive of the mining laws in this country was thus to give each man such defined rights as would encourage him to search and work for mineral deposits, and to prevent disputes between several claimants. But when minerals were discovered in deposits so rich that the discoverers or their legal successors found themselves in possession of immense wealth, another motive began to influence the course of legislation. Hitherto the State had fixed the fees payable on mining licences mainly with a view to meeting the cost of administering the mining laws. But soon the idea gained strength that the State itself was entitled to a share in the rich proceeds of the new industry; and government began to frame laws to divert part of the wealth obtained from mines to the general purposes of the State by means of taxes levied in a variety of ways. These taxes are imposed, not only on mining rights granted by the State over public lands, but also on the mining rights held over private land which, as we have seen, the government assumed the right to regulate.

Diversity of mining law arising from separate legislation in different colonies.

The result has been that in the course of the last forty years the discovery of diamonds and gold in South Africa, and the conditions created thereby, have led to far-reaching changes in the system of land tenure, as well as in the sources from which the public revenues are drawn. These changes, however, being handled not by one government but by many, have proceeded in the various colonies on widely divergent lines. Before the days of mining the Roman-Dutch law had given South Africa a fairly uniform system of land tenure; but the action of at least five different legislatures has since raised upon this common foundation five systems of mining rights, all differing in a multitude of details from one another. In Statement No. VI. will be found a comparative analysis of these five systems of law, which serves to show how exceedingly diverse their provisions are. Statement No. VII. is a list of the various statutes. So far as existing rights are concerned it is clearly impossible to replace these laws by one uniform code: and even if such a code were limited to future rights, years of experience and research on the part of a central government would be needed before it could be framed.

Statement No. VI.

Statement No. VII.

Method of registration.

For the present, however, we are concerned, not with the diversity of mining law, but with the means adopted for the record of mining title. Complex and multifarious as mining rights are, they are secured, generally speaking, in a way analogous to those in land; but in as much as they are temporary and differ in other ways from landed rights, and also

because the difficulties involved in them demand special knowledge, and for other reasons as well upon which it is hardly necessary to enter, it is usual whenever such rights are numerous and important, to record them separately from landed title in special offices provided for the purpose. None the less this arrangement involves duplication of functions; because wherever land is subject to mining rights it is found necessary to note the fact in the deeds registry also, and because bonds executed against mining title must also be registered in respect of their general clauses in the same office. All that has been said about the difficulties of centralising land registries applies in even greater measure to those of mining title. But our main object has been, not to discuss the lines on which registration may develop in future, but to explain the important part played by the registry offices in the conservation of property, and to show how such agencies are an inevitable corollary to the judicial system of a civilised State.

Surveys.

Surveyor-general. His responsibility for the correctness of diagrams attached to deeds,

As we have seen, the accurate registration of rights in land involves the preparation of correct diagrams as an auxiliary operation. The ultimate responsibility for the diagrams attached to deeds rests with the surveyor-general of each colony. It may happen, as in the deeds office at Cape Town, that the routine work of verification is done by a surveyor at-

tached to the staff of the registrar himself; but if any dispute arises between the registrar of deeds and the surveyor who has been employed to frame the diagram by the parties to the deed, the surveyor-general is always the final arbiter.

and by fixing points by reference to which they can be located.

We have already mentioned that the diagrams which form part of the deed of title must not only be a correct delineation drawn to scale of the boundaries of the land which are marked out by beacons and described in the deed, but that it must also bear on its margin such data as will enable the position of the boundaries to be located with reference to adjoining properties. The surveyor-general should also be able, if required to do so, to correlate the diagrams with points within the colonial territory whose position on the earth's surface has been carefully fixed. Evidently this work is easy in proportion as such points are many and their interspaces small, and therefore it is one of the duties of the surveyor-general of a colony to provide as many master-points as possible throughout its territory.

In time the State should produce maps which would render private surveys unnecessary and facilitate administration and business.

How much of this work remains to be done in the vast extent of British South Africa may be seen from the backward conditions which exist, even in the oldest of the Colonies. In the Cape Colony, what is called a primary triangulation has been carried out on the "grid-iron system." But the sides of the triangles are from 20 to 100 miles in length, and owing to the peculiarities of the system

there are many places in the Colony which are separated by an even greater distance from the nearest master point. In order to remedy this state of affairs it is necessary by means of a secondary triangulation to establish beacons about 7 miles apart; but so far this has been done over a very small portion of the total area. In most parts of the Colony it is still impossible for surveyors to link the diagrams they have made to master points fixed by the government, and many of the existing diagrams attached to title deeds are not an infallible key to the true position of the land to which they relate.

These property surveys, together with the limited number of points which the government has fixed by primary or secondary triangulation, are the data from which the existing maps of South Africa are compiled. Maps of this description are useful for travellers and for enabling the country to be divided into districts for administrative purposes. But the surveys upon which they are based are made for cadastral purposes only, that is to say merely as a record of ownership, and they do not purport to show the conformation of the country or the character of the surface, whether cultivated or otherwise, or the objects by which it is covered, such as rivers, roads, forests, buildings, or rocks. Such maps are no more than make-shift compilations, and differ in kind from the ordnance survey of the United Kingdom or from those

prepared in an even more accurate and elaborate manner by most of the principal governments of Europe. They are quite inadequate for military requirements, and altogether useless for any of the purposes for which topographical data are required, such as the projection of irrigation works, of railways and other engineering schemes, or as a basis for geological surveys. The want of such maps is a serious clog on the development of the country, for without them a considerable amount must be spent in surveying before irrigation or railway schemes can even be considered by the government.

Advantage of centralising land registration and survey.

If a national government is established there are clear advantages in making the registration and the survey of land subject to its control. We have already given some reasons for thinking that it might be difficult, if not impossible, to centralise all the registries of deeds in one place; but it would be a great gain if all of them were conducted upon one system and subject to a single law. So far as mapping is concerned, it is evident that a central government which found itself responsible for the native territories, for military operations, for police, and for railways, would have no choice but to establish a survey department of its own. When this happened there would be no difficulty in arranging, as in other countries, that local authorities should depend for their maps on the national government; but it would be out of the question to reverse the position and

to make the national government depend on the local authorities. Very probably the existing survey offices, like the deeds offices, would remain where they are; but by being brought under a central direction they would be made to produce maps of uniform detail and size.

How the surveying profession is regulated.

There is another benefit to be expected from placing surveys under a central government. The responsibility for certifying that candidates are qualified to practise the profession of surveyor rests with the surveyor-general in each colony. Certificates granted in the Cape Colony, Transvaal, and Rhodesia are interchangeable, but they do not entitle the holder to practise in Natal or in the Orange River Colony; nor do certificates granted in either of the latter colonies entitle the holder to practise elsewhere. The profession is certainly one which ought to be regulated by a central government rather than many local ones, for it is obvious that a surveyor who knows how to measure land on the north bank of the Vaal may safely be treated as capable of doing so on the south bank. It is another instance where free trade in professional skill is the only reasonable arrangement.

Control of subdivision of property.

An important consequence of making registration a necessary condition of the transfer of title in land is that government is in a position to control the sub-division of land by its owner, wherever it finds it expedient to do so. Such control is not ordinarily exercised over rural property, though even in country areas

conditions are conceivable in which it might be necessary to apply it. But in the Orange River Colony and the Transvaal at least the government exercises its control immediately an owner wishes to sub-divide his property in such a manner as to create a township.

Why government controls the establishment of towns.

Persons who make their living in a factory or mine, or by trade, must reside within reach of the source of their livelihood. The demand for sites as near as possible to the factory or mine or market raises the position value of the land above its agricultural value. Often the land is in the hands of one owner, who in such case enjoys a monopoly. But even if there are many owners, there is no reason to suppose that, if left to themselves, they will keep in view any consideration but their own profit when sub-dividing their land into building plots. But the community at large has far wider interests to consider; it has to think of the health, convenience, and general well-being of the inhabitants when the land has become closely covered with houses; and all these things depend primarily upon the character of the plan laid out. The owner is under no obligation in common law to provide for the repair of roads giving access to the plots sold, or indeed to provide roads at all. Nor is he compelled to contribute towards all the other expenses which arise only when houses multiply and cluster into blocks of buildings. But all the while a town is growing, wealth is pouring into the owners' pockets by the increase of position values. This is a form of wealth which, unlike the revenues

from farming or mineral values, is realised with little or no effort on the part of ground landlords; and since it arises from conditions which involve new expenditure, it is only reasonable that the income should be in part applied to meet the outgoings. Older countries have found by bitter experience that through allowing landlords to smother their ground with dwellings with an eye to profit only, and in utter disregard of all the changes which ensue where land is crowded with population, they have involved themselves in social problems of intense difficulty. There are few matters in which it is more necessary for a good government to show foresight than in this.

Control over establishment of townships in the Transvaal and Orange River Colony.

In the two inland colonies at least the State has made a conscientious effort to discharge its responsibilities. By virtue of the check which it can apply as registering authority government refuses to allow townships to be erected until plans have been approved by a board created for the purpose of considering them, and until an owner has provided a certain endowment for public purposes, usually in the form of plots or townlands. It acts boldly upon the principle, already mentioned, that a close aggregation of people near one spot begets new value as well as new public expenses, and that one should be made to contribute to the other.

Constitution and powers of township boards.

In the Orange River Colony the township board takes the form of a commission specially

appointed in each case. In the Transvaal there is a standing board presided over by the surveyor-general. The registrar of deeds also has a seat on it. If the functions of land registration and survey were assigned to a central government, the duty of supervising the subdivision of land would naturally go with them. There is an additional reason for such an arrangement. It is the business of the township board in the Transvaal, in consultation with the post office, to prevent the duplication of names. Residents of Middelburg in the Cape Colony and Middleburg in the Transvaal will appreciate the utility of these efforts, and the need of some authority competent to see that one name is not given in future to two or more places in South Africa.

Pounds.

Protection of landed property from trespass by animals.

The establishment of pounds as a means of protecting land from the trespass of stock is another function of government connected with the conservation of property. Anyone finding a stray animal can send it to the nearest pound. After a certain period the beast is sold, unless in the meantime its owner has redeemed it by paying a fine, as well as compensation for any damage which it may have caused to private property, and the cost of its keep while impounded. The system is regulated in each colony by statute law. Municipalities administer pounds within

their own areas, sometimes under their own bye-laws, and sometimes under the general law. The latter plan has many advantages, and when a new administrative system is created, its framers will probably do well to arrange that while the administration of pounds is managed by local authorities, it is directed by one general law for the whole of the country.

Registration of brands.

Record of ownership in stock.

Government also undertakes to record ownership in stock, with the double object of protecting it from theft and from disease. This is done by allotting to each owner who applies for it a special brand, and by recording such brands in a central register which is published in the form of a directory each year. The brand is *prima facie* evidence that any animal bearing it belongs to the person in whose name it is registered. Laws dealing with branding have been passed in the Cape Colony, Natal, the Orange River Colony, Transvaal, and Southern Rhodesia. None of these compel branding, but some of them forbid branding unless the brand is registered. Otherwise the various systems differ in many details. It would obviously be of the greatest advantage if the law on this subject were not only compulsory, but consistent throughout the whole country. It is another instance where the ad-

ministration may well be local if the law is uniform.

Property in ideas.

Development of the notion of property in ideas.

We have seen how the desire to encourage industry by securing to each man the results of his own labour is the main source from which the system of material property has sprung. As society develops and grows more complex the value of brain work continually rises, and the notion of property in ideas begins to appear. Exactly what happened in the case of land where registration has come to be a necessary incident of title has happened also in the case of property in ideas. The State undertakes to secure a man's title to ideas which may become a source of profit so long as they are susceptible of definition and record. Property may be claimed, for example, in a new idea for some mechanical contrivance, a chemical composition, or an industrial process, or for any article or in any means or method of production which can be put to a practical commercial use. The rights of property in such ideas or of their use is secured by the issue of letters patent under an ancient prerogative of the Crown. Again ideas which consist in the application of outline or colour to an article of manufacture such as the pattern on a wall paper or architectural drawings, can be protected as designs. Similarly the ideas and methods of a manufacturer may procure a reputation for his products, and

Patents.

Designs.

Trade marks.

if he thinks fit he can obtain a certain property in that reputation by the device of trade marks. The extreme case is that of copyright by which ideas that have been expressed in a book or picture or music can be protected from piracy.

Diversity of South African law relating to patents, etc., and its consequences.

Many different systems might be devised for defining and recording property in ideas. If five different persons set to work independently to draw up schemes for the protection of patents, designs, trade marks and copyright, we may be sure that each would produce a plan which differed in most of its details from the others. But all of them would certainly involve registration by the government and payment of fees. This is just what has happened in the four self-governing colonies and Rhodesia. The Cape Colony and Rhodesia have the same law of copyright and design, but otherwise the systems which the five governments employ for registering patents, designs, trade marks, and copyright differ from one another in a multitude of details. To quote one illustration only, the copyright of a book in Cape Colony endures till the author's death and for five years after, in Natal for seven years after death, and in the Transvaal for fifty years from publication; so that a book might well be copyright in the Transvaal for forty years after protection had expired in the coast colonies. The laws of industrial property are indeed so complex that an owner of an idea invariably finds it necessary to employ an expert agent. This means that in order to obtain protection throughout South Africa with its population of

one million whites he must pay fees in five different offices and employ five different agents. The process will cost him as much time, trouble and money as to obtain protection in Spain, France, Germany, Austria and Italy with an aggregate population of 178 millions, and five times as much as in the United States with a population of 80 millions. Moreover, when he has secured his title he will find that it is not of equal value in each colony. The patent systems of most countries fall into two main classes. In the first the grant of letters patent is such a simple process as to be little more than a formality, and their value is left to be tested by subsequent actions for damages for infringement. This is the system adopted in England and copied in varying degrees by the Cape Colony, Natal and Rhodesia. For the State it is the cheapest system, but for the public the most expensive. The inventor has no assurance that the protection which he obtains by his letters patent is worth the paper they are written on, and the operations of industry are liable to be clogged by a litter of invalid patents. Patent laws of the other kind subject all applications to a severe scrutiny, and the rights which they ultimately grant have in consequence some guarantee of validity, which varies with the severity of the investigation. This system is the most expensive for the State, but the cheapest for the public. The best examples are the systems of Germany and the United States, where government undertakes the enquiry on its own motion. Some-

times, however, a middle course may be chosen, as in the Transvaal, where the initiation of the enquiry is left to the public, but the grounds on which the grant of letters patent can be opposed are very broad. The modern tendency of industrial countries is towards perfecting the system of State examination, but since this involves employing examiners skilled in all branches of chemistry, mechanics and other sciences it is only to be justified by a large volume of business and a large revenue from fees. A committee appointed last year to enquire into the administration of the Transvaal patent office was driven to conclude that there was not sufficient patent business in the colony to warrant the retention of a highly skilled and expensive commissioner of patents. They observed:—"The obvious suggestion which presented itself to us in this connection was that "there should be a single patent office for all "the States of British South Africa. . . . "the direction of such an office would provide "ample scope for a commissioner of the highest "attainments." Indeed the only possible conclusion upon this subject is that not merely does the existing dislocation inflict needless inconvenience and expense upon the public, but that it prevents the establishment of an adequate patent office constructed on modern principles, which would provide the inventor with a more valuable protection at a smaller cost than at present.

Development of the artificial personality based on public registration.

We have seen how public registration has been used to improve the system of property in land, and to create several kinds of property in ideas. The same device has been used to create a new kind of person to hold and handle property of all kinds for commercial purposes. Joint enterprise begins in the association of two or more individuals to carry on a common business and to share the gains and losses. In such an undertaking the rights and liabilities in common are merely the joint rights and liabilities of the individual partners, by or against whom alone they are enforceable. The next stage comes when the partners are treated as a corporation capable of holding property, or of being sued in its own right. From one point of view such a corporation is an artificial personality with a legal existence apart from its members; from another, its personality is not distinct from the members, because the ultimate liability rests with them. Under modern conditions, however, it often happens that one man has special knowledge, whether local or technical, or has shown himself to possess an unusual power of organisation in one particular kind of enterprise. Although such knowledge or ability is a valuable asset, he may not himself possess the capital necessary in order to turn it to the fullest account. He therefore enters into partnership with others, he supplying the mental and they the material means for the

undertaking. Assets, however, which consist in special knowledge or ability, though very real, are intangible and somewhat difficult to control. Many people are willing to contribute to a venture, which depends on the personal qualities of another, provided that in doing so they risk no more than a fixed amount, and are not called upon to involve their whole estate. When the legislature intervenes to limit the liability of each partner in the undertaking to such property as he may choose to place in the common stock, the process of evolution is complete. The legal personality of the corporation is then entirely severed from that of its members.

Danger of fraud arising from principle of limited liability

When a bill to facilitate the incorporation of companies with limited liability was introduced in the Imperial Parliament, at least one eminent authority on commercial law objected to it, on the ground that it opened the door to all manner of fraud. And to some extent these fears have been justified. It is notorious that company promotion is a favourite device of those who desire to enrich themselves at the expense of their neighbours. In the course of the last fifty years the statute law has been freely invoked to correct the faults of its own offspring, and to regulate its behaviour. As has been said, the limited liability company is a person in the eye of the law, and the law retains the right to preside over its birth, career and dissolution. To begin with, its existence is made to depend

on public registration. Next, as it cannot be punished except in the person or property of its members, penalties are imposed on the individuals responsible for breach of the conditions under which it is permitted to exist. The commercial character of a community will greatly depend upon the effectiveness or otherwise of these safeguards against fraud. In a country which, from the business point of view, is a single and indivisible whole, the danger of fraud is greatly increased, if in different places the law protects the public and enforces commercial morality by different means and in different degrees.

greatly increased by diversity of company law in S.A.

This is the state of affairs in South Africa. Each of the five colonies has its own company law. These, however, fall into two main classes. The company laws of the Cape of Good Hope and Southern Rhodesia are closely copied from the Acts of the Imperial Parliament, and are in consequence fairly complete. On the other hand, the law in Natal, which is closely followed in the Transvaal and the Orange River Colony, is far less elaborate. The principal Act in the Cape Colony contains 228 sections, while that of Natal contains only 17. The actual constitution of companies differs in the different colonies. For instance, in the Cape Colony, the Orange River Colony and Rhodesia an association, in order to obtain registration as a company with limited liability, must consist of not less than seven members; in Natal the number is ten, in the Transvaal twenty-five. The practical incon-

venience of these differences of form and procedure, instances of which could be multiplied, is serious. But the differences in the protection afforded to shareholders and the public in the different colonies amount to a greater evil. It is idle for the law of one colony to penalise double dealers if they can keep clear of its meshes by registering their concern in the next colony.

Fiscal unfairness.

Apart from this there occurs a certain measure of fiscal unfairness. A company can choose to register itself in whatever colony it pleases, even though its actual operations are conducted in another jurisdiction. The registration fees go to the colony in which the company is registered. The Transvaal, for instance, derives considerable revenues from companies mining in other colonies. In this way one colony may actually gain, if the looseness of its company law encourages promoters to register within its jurisdiction. One of the first needs of South Africa, which cannot be met in the absence of a national legislature, is a complete and uniform code of company law.

Weights and Measures.

Importance of uniformity in administration of weights and measures.

Another class of rights dependent for their exact definition upon government action are those of buyer and seller in the ordinary operations of exchange, which depend on weights and measures. Such standards unlike those of time are purely artificial. If they are to be universal they must be prescribed by law and

based on concrete models: in English countries there are actual pound measures and yard measures, and in countries where the metric system obtains, kilogram measures and metre measures, constructed, certified and preserved by government. The enforcement of a uniform standard of weights and measures has long been recognised as the first condition of sound commerce. In England indeed it was required by so ancient a document as Magna Carta. A few years ago commercial and municipal bodies in the Transvaal complained of the confusion and uncertainty which existed in regard to weights and measures, to the great encouragement of fraud and hindrance of honest trade. The justice of their complaint was readily recognised, and to remove it a bill was drafted and a commission was appointed to take evidence and to revise the draft. The commission began by describing what they found in the following words:—

"One object of such an ordinance is to "standardise weights and measures so that "throughout the colony a perfectly definite and "easily understood meaning applies to all the "weights and measures in use. Unless such a "meaning applies, commerce on a straightfor-"ward basis is impossible. An instance of "uncertainty is afforded by the word 'ton,' "which, according to circumstances, may mean "either 2,240 lbs., 2,000 lbs., or if gross weights "are permitted, a varying net weight some-"where between 1,920 and 2,000 lbs. Such "looseness has nothing to recommend it and "gives rise to friction, loss and general uncer-"tainty."

Difficulty of reforming system in one Colony alone.

The commission went on to advocate the substitution of the metric system for the traditional English system of weights and measures; but added that it was impossible to enforce it "unless the other British colonies of South Africa "combine for such a purpose." Further they dwelt upon the importance of preventing sellers from including the weight of packing in the weight of articles sold. Finally they advised that the government, which must keep the standard weights and measures, should undertake to test weights and measures throughout the country and generally enforce the provisions of the law. The draft law was amended so as to include these recommendations. But it never became law owing to the protests from commercial bodies in other parts of South Africa, who represented that while it was in itself so excellent that it ought to be passed by all the colonies together, its enactment by one colony alone would dislocate trade throughout the country. In the event the various colonies have never combined to pass the law, and the Transvaal has been unable to reform conditions which act as a clog upon trade, tend to demoralise those who engage in it, and bring the whole commerce of the country into disrepute.

CHAPTER V.

The Protection of Society.

The functions of government which relate to law, including a judicial system and certain attendant agencies, have now been described. Next in order come those duties of the State which are connected with the defence of the community against external attack, internal revolt and individual crime. Distinct as these three functions are, the same agency may be, and as a matter of convenience often is, employed for two or even all of them.

The functions of defence, suppression of revolt and police distinguished.

Defence.

For geographical reasons it would be difficult for an enemy to invade South Africa by land, but its coasts and harbours are at the mercy of any fleet which has obtained command of the sea. At present the only protection to which this country can look against attack by sea is afforded by the Imperial navy. This remark applies to the inland colonies as fully as to the coast colonies. The capture of Cape Town or Durban by a foreign fleet would affect Bloemfontein, Johannesburg, Pretoria and Bulawayo as much as Maritzburg and Kimberley, the last of which though situated in a coast colony is further from the sea than any town south of the Limpopo. But while all the colonies are equally interested in the

problem of naval defence it cannot be said that they all show their interest in a practical manner. Only the coast colonies contribute to the cost of their protection. The Cape Colony makes an annual grant of £50,000 and Natal a grant of £35,000 towards the expense of maintaining the British Navy, while each supports a small force of naval volunteers. This means that the taxpayers of Kimberley and Maritzburg contribute, while those of Johannesburg do not.

Suppression of revolt. Imperial expenditure on maintenance of order.

A large garrison of regular troops is also maintained in South Africa, which cost the taxpayers of the United Kingdom about £2,500,000 during the last financial year. To this figure should be added the interest on a capital sum of £6,500,000 spent upon cantonments and other establishments. The British garrison is still stationed in South Africa, partly because command of the southern portion of this continent is essential to the strategic defence of other portions of the Empire, especially India and Australia, but still more in order to preserve order amongst the native peoples, not only in the protectorates directly subject to Imperial rule, but generally throughout South Africa. In the course of the last few years it has on several occasions been a question whether Imperial troops should not be called into action to quell a native rising, and their employment on such duty has been urged in the public press. Such a proposal implies no reflection upon the readiness of the colonial population to guard their own

existence against the attacks of savagery. It may be readily admitted that in colonies where the proportion of whites to natives is large, governments are strong enough to suppress local risings amongst the native population. But in colonies where the white community is relatively small (and we have seen in statement No. I. how enormous the numerical disparity sometimes is) no prudent statesman would assume as a matter of course that the local government is strong enough to maintain order with its own unaided resources.

Inter-Colonial conference on defence, 1907.

This doubt found definite expression in January, 1907, when a conference of the four colonies and Rhodesia was called at Johannesburg, to consider a scheme under which all these governments should co-operate to suppress insurrection in any one of their territories. For this purpose an agreement was drafted, but it has not as yet been adopted by any of the parties to the discussion. Under its terms any government which found itself in serious difficulties with its natives was to be entitled to call upon all the other governments to furnish a certain number of trained men. The Cape Colony would be required to supply 1,500, the Transvaal 1,000, the Orange River Colony 500, Natal 500, and Southern Rhodesia 200, making a total of 3,700 men. The whole cost was to be paid by the colony summoning the levy, which would have the supreme command of the united forces. But no colony was to require the assistance of

the others, until it had first called out three-fourths of its own volunteer or militia forces. The framers of this simple and practical plan, however, found themselves faced with the inevitable legal problem. It was doubtful whether the troops of one colony would be bound by its laws for the purposes of discipline when serving in the territory of another, and it was proposed that legislation should be passed in each of the colonies to meet the difficulty.

Maintenance of order in each colony of interest to all South Africa.

The preparation of such an agreement shows how strongly every colony feels that the suppression of revolt within the boundaries of any of its neighbours is of vital concern to it. An uprising in the Transkei, for instance, would certainly imperil Natal more than the Western Province of the Cape. Hitherto we have spoken only of the self-governing colonies, but a factor which in part accounts for the presence of Imperial troops and certainly increases the danger to the white communities is the presence of large native populations living in protectorates under the Imperial Government. There is no need to take an alarmist view. The most competent judges of the existing situation would regard it as perfectly secure, if there existed a small but highly trained and mobile force, which one central authority in South Africa could immediately launch at any centre of disorder, wherever situated. But no one can shut his eyes to the waste of strength besides the positive danger which the present arrangement

entails. The chief storm centres which may affect the peace and welfare of the whole of South Africa are subject to the control of separate governments, one of which has its seat 6,000 miles from the scene of action, and none of which is in a position to take the prompt and effective action which possible contingencies might demand.

South African forces and police.

As it is, the presence of regular troops has by no means relieved the colonial governments from the necessity of maintaining standing forces for defensive purposes in the form of militia and volunteers or armed constabulary. And finding themselves compelled to do so they naturally employ some of these forces during times of peace to do the work of ordinary police in the country districts and even in towns; in other words, to exact obedience to the law from individual members of the community. Such forces, in fact, serve either in a military or in a police capacity as required. The Cape Colony, however, maintains for the larger towns separate forces, which are not liable for military service. In Durban the municipality employs its own police. On the Rand and in Pretoria also there existed till lately special town police who were, however, liable for military service and served under government, and not under municipal control. They have now been fused into one body with the district police of the Transvaal.

Punishment.

The police are only the primary instruments employed in the preservation of society from

internal disorder. The law is actually enforced by inflicting punishment upon persons convicted of its violation. Such punishment takes the form either of fine, loss of status, imprisonment with or without hard labour, flogging or death: and all of these means require the provision of a certain machinery. Even the smaller towns throughout South Africa are provided with lock-ups where prisoners are confined on arrest until their case can be dealt with by the courts. In the larger towns where magistrates reside there are gaols where offenders under short sentences are confined. There are also in each colony central convict establishments, such as that at the breakwater at Cape Town, where long sentence prisoners serve their term.

Juvenile offenders.

Contact with hardened reprobates in a gaol often converts first offenders into habitual criminals, and it is the aim of all modern States to check this mischief as far as possible. But classification and segregation are possible only in larger prisons than most colonies can afford to establish for themselves alone, and there is no doubt that the penal system would be improved by a process of concentrating old offenders in a few large and highly-organised institutions. Reformatories for boys also depend for success largely on proper classification and segregation. The only reformatory which at present exists in South Africa is the one established by the bequest of Sir William Porter at Tokai in the Cape Colony. The other governments have

hitherto contented themselves with sending their juvenile offenders to Tokai as far as the Cape government has been able to receive them. Unfortunately Tokai cannot house all the juvenile offenders in South Africa, and boys in other colonies are often sent to prison as ordinary criminals; with the result that they emerge with the reputations of gaol-birds and practise crime as their only means of subsistence for the rest of their lives. Some provision is now being made for a reformatory in the Transvaal, but in the smaller states there is little prospect that this blot will be removed from the penal system of South Africa. But with union there need be no difficulty. If all juvenile offenders were dealt with by a central government it would be possible to divide them into classes so as to provide each case with the special treatment which it requires and to maintain and provide proper accommodation for them all.

CHAPTER VI.

The Composition of Society.

Unlike European States which are homogeneous,

In the great countries of Europe the various races, Celtic, Teutonic or Latin, are sufficiently akin to one another to be capable of living side by side under the same institutions. When two or more are thrown together in one country they easily combine, and their progeny are as good as, or even better than, either of the parent stocks. Generally speaking, the population of a European country is all of a piece, and so therefore is the State, because the unity of the one is reproduced in the other. The same is true of some of the large countries of Asia, such as China and Japan.

South Africa is divided into two widely different societies,

The conditions of both these continents are in striking contrast to those of South Africa, where two societies are established side by side, the smaller drawn from the most advanced races and the larger from the most backward ones in the scale of human development. There is no important family of men more widely separated in ideas and manners from the European than the negro race. Indeed, so wide is the cleft between the two peoples that their mixture, instead of being encouraged, is generally condemned. At the outset, therefore, South African governments

are called upon to deal with at least two separate societies, whose ideas, aims and interests are kept apart from each other by a wide hereditary gulf. They have to admit the existence of two laws, and to provide in many cases a two-fold judicial, administrative and political system. These separate societies, living in the same country, are always in contact and yet, as will appear hereafter, it is difficult for them to touch without inflicting some injury on one another.

and its government must consider the interests of both.

In the early days of white settlement slavery was regarded as the proper status for the lower race. This solution frankly assumed that the native existed, not for his own sake, but for that of the European. Slavery has long been rejected as a possible basis for civilised society, and it is difficult to conceive how it could exist under modern conditions without demoralising the dominant race. Nevertheless, the notion that the interests of European society are absolutely paramount and exclusive is by no means extinct. Sometimes it takes the fantastic shape that the problem will be solved in the end only by the elimination of the native, whether by machine guns, bad brandy, or banishment to the low veld. Such opinions avoid a difficult road by a short cut over a precipice, and no responsible person entertains them for a moment. The governments of South Africa have frankly admitted their responsibility as trustees for both races, and remain faced with the problem of finding room in one household

for two occupants each with ways of life hardly compatible with those of the other.

To begin with, the legal systems of the two are in conflict.

To realise the difficulty of reconciling the two social systems we have only to notice what happens when they meet on common ground. In his own society the native had no conception of private property in land, and he is slow to assimilate the idea of it from the white. Before the Europeans came his tribe grazed its cattle on whatever land could be protected from the depredations of neighbouring tribes. But the first idea of a white settler when he entered the country was to mark out and to appropriate a farm for himself. The process is essential to white settlement, and at first it caused no inconvenience to the natives. Very soon, however, as more land was taken up, the native and his cattle were gradually pushed out. The stronger system of society encroached on the weaker, and took its place. Most of the Kaffir wars were the inevitable result of the conflict between the two. The historian may find much that is regrettable in this, as in other processes of evolution; but the white pioneers themselves can scarcely be condemned except on principles which carried to their logical conclusion would have reserved America, Australia and New Zealand to their aboriginal inhabitants.

So are their moral systems.

As soon as his new country becomes settled the European expects to live with the measure of liberty to do wrong as

well as to do right, which his conception of freedom implies. But the degree of liberty which acts like a tonic on European society, becomes an intoxicant when administered to a race of children endowed with the passions of grown men; and thus the line which divides matters of conduct regulated by the State from those which are left to private conscience is, and must be, drawn for Europeans in one place and for the natives in another. For example, there exist over most parts of South Africa two separate sets of liquor laws operating side by side. While the closer restriction applied to the native benefits the lower race, it tends to deprave the poorer class of whites by generating a new and lucrative kind of crime. South African gaols are full of European prisoners convicted of selling liquor illegally to natives. But the difficulty of maintaining two different standards of legal restriction side by side may be even better understood by another example. A recent commission on the native question records the following statement by a native witness:—

"The Morality Act imposes severe imprisonment upon native men going with white women, who may also be penalised, but avoids the reverse, and they frequently say in reference to this law 'If your men with impunity go with our women, why may not we go with yours?'"

So are their economic systems. Caste has succeeded

We have seen how South Africa, when it abandoned slavery, had no alternative but

slavery, and operated to confine rough labour to the coloured races,

to admit two separate social systems. It is true that the great reform of 1834 purported to leave no distinction between the social and civil status of the two races. But it did not, and could not possibly, abolish the barriers of race which forbade the two to unite as one nation and society. As a matter of fact, the whole province of human activity was divided into two departments. To the higher was reserved every kind of work demanding the exercise of intelligence in any appreciable degree; and to the lower was assigned the labour which requires mere physical force. An industrial wall of partition was raised between the races. A native of exceptional parts, who aspires to become a clerk or a skilled artisan, is looked on as invading the white man's domain, and the white man who acquiesces in merely physical labour is thought to debase himself to the level of the native. How unstable such a position is we shall soon see. It is not too much to say that when civilised society abandoned the system of slavery for that of caste it left a quicksand to build its house on ground but one degree less treacherous; and already it finds the foundations beginning to sink once more. The caste theory takes no account of the fact that a certain proportion of whites are born without the capacity to hold their own in the sphere of skilled labour. In Europe or America such men can earn their living by rough manual toil, but the caste sys-

tem finds no appropriate place for them. South Africa presents the strange and ominous spectacle of a country urgently in need of population to fill it and yet rapidly breeding a race of paupers on its own soil.

and virtually to exclude the Africander from skilled labour as well.

But the evil effects go further still. In the long run a system which forbids the white Africander to do unskilled work, operates to exclude him from the ranks of skilled labour also. In trying to set themselves above mere physical toil a great number of whites are throwing away their only chance of obtaining a footing in the industries of the country. Such labour is a commodity which every able-bodied man can offer, and the doors of higher employment will open to him in time if he has the natural capacity to enter; but if he begins by refusing to dispose of his labour at its economic value he finds most of the doors locked in his face, for physical labour is the school in which are learned the habits of industry and the rudiments of skill required by the trained craftsman. The result is that the majority of artisans required in South Africa have to be imported from over sea. Most of the work that in Europe leads on to skilled employment is here performed by coloured hands; and thus the same custom that debars the lower-class European from rising is opening the door to his coloured competitor, who has begun in the humblest ranks of labour. The more intelligent of the coloured people are rising above the level of manual labour and

becoming skilled workmen, and in spite of the resistance of white society are tending to force their way across the line to a position superior to that of the poor whites. Gradually the truth begins to assert itself that the effects of a caste system are almost as pernicious as those of slavery, though the operation of the poison is more insidious and slow. No society which is not based on physical toil can long maintain its vigour, and one society cannot subsist for long upon the labour of another without developing the properties of a fungus.

Skilled labour requires a substructure of unskilled labour,

For skilled labour to find employment a sufficient force of rough labour must also be available. If an industry is too large for the employer of labour to do his own skilled work, he must employ skilled labourers, and under present conditions these will usually be white artisans. But in some industries the skilled men are practically the warrant officers directing the ranks of unskilled labour, who supply such physical force as cannot be furnished by mechanical power. In other industries they labour and do not direct; but their labour is of a kind which entirely depends on the collection or preparation of material by unskilled workers. It follows that without a supply of rough labour the industry cannot proceed nor can the white artisan obtain employment. The employer as a business man will select from the various classes of rough labour available that which promises to be the

cheapest. But if he turns to the poor whites accumulating on the soil, he finds them of little use for his purpose because, as we have seen, the customs of the country have destroyed their efficiency as labourers by relegating unskilled work to a lower race. The poor white has grown to believe that by accepting a wage substantially lower than that paid to skilled artisans, he will lose caste as a European, and he prefers what he imagines to be honourable indigence to degrading toil. It is only when coloured labourers are very scarce, and when a large number of white workmen are unemployed, that labour in South Africa has been offered to poor Europeans; and even then the offer has generally come from governments and public bodies, and has been made as a matter of policy rather than of business. So far it has needed the stress of prolonged and grinding poverty to induce white men in South Africa to accept the economic wages of unskilled labour.

which owing to caste prejudices cannot be white.

Failing indigenous sources of supply, suppose the employer tries the alternative of importing white labour from abroad. He still cannot escape the influence of the caste custom. To begin with, any scheme for importing a force of white unskilled labour would have to face the opposition of the skilled workmen already in the country, who perceive that many of the new recruits will acquire skill and come into competition with themselves—the more readily as they will not be hindered by the custom of caste, which at

present seeks to prohibit employers from offering work to coloured craftsmen. But even if this difficulty is overcome, there remains another. Shy immigrants, uncertain of their footing in a strange society, are peculiarly amenable to its traditions. In a few months they become infected with the prevalent ideas which render white men in this country unavailable for rough work. They soon expect to be treated, not as labourers, but as overseers, and to be paid as such. It is not a vague prophecy but a reasonable deduction from actual history to say that if a thousand Northumbrian pitmen were imported to work a South African coal mine the value of their labour would have greatly diminished in a twelvemonth. The practical outcome of the position is that South African employers are compelled to fall back upon the coloured labour of the country, and only such industries can be founded as are payable on this basis.

The alternative is coloured labour

Now in organising the native labour of the country employers are at once driven to adopt methods very different from those followed by employers of white unskilled labour in Europe. The European worker who hopes to obtain continuous employment must have a certain sense of responsibility. If he leaves one place to take another without notice, or if he neglects his work or runs away or drinks, he loses his character and no one will hire him. There are plenty of others to take his place, and he quickly sinks into poverty or

crime. The natural penalties of irresponsibility are so serious, that the relations between workman and master can be perfectly well left to the ordinary law of contract enforcible in the civil courts. Indeed, it is seldom necessary for the courts to intervene. What happens in practice is that the employer, having attracted his labour by the rate of pay which he offers, relies on keeping it by making the conditions of his service satisfactory; and having thus made sure of his supply of labour, he trusts to a certain faculty for handling men, either in himself or his managers, to obtain the value of the work for which he pays.

the defects of which the law intervenes to correct,

For the Kaffir, however, a low sense of responsibility involves no serious consequences. His ways of life are primitive, and he obtains food and shelter of a kind almost anywhere, and can always fall back on his kraal in the last resort. To the employer he is only one of a swarm, and, unlike the white man, he can easily sink his identity and escape becoming known and marked if he takes to bad habits. These characteristics of the native have led the State in many parts of South Africa to supervise closely the relations between the master and his coloured workmen. The native is provided by government with a pass, which not merely is a record of the contract between his master and himself, but also affords a basis for an elaborate system of registration, enabling his identity to be traced and his movements from one district to an-

other to be followed. The arrangement is designed for the benefit of both parties, and officers are appointed by the Government to enforce the specific performance of the contract on employer and labourer alike. If the master neglects to feed, clothe, house or pay his servant in accordance with his contract, he is liable to a criminal as well as to a civil action. On the other hand, if the labourer neglects his work or refuses to obey orders he is dealt with as a criminal, and can be imprisoned. The pass also becomes a record of the native's character, and the pass office develops into an effective agency for the employment of natives. To this extent the system benefits the natives, in that it renders their labour more easy to obtain and to direct than that of any other class available in the country.

at the risk of becoming oppressive.

At the same time it is no matter for surprise if the natives themselves fail to appreciate the advantages of the pass system. Any scheme of restriction involves a danger that the bonds may become too many and be drawn too tight, and this danger is the greater where a Government is eager to be thorough in its work. Any resident in South Africa could multiply instances where the system has worked badly, but one may be mentioned. An employer who proposed to move his establishment to another town, sent his clerk to the pass office in the town where he lived to obtain the necessary passes for his servants. The employer himself was a lawyer, but he

took the precaution to submit the passes to the office in the place to which he was moving, and to obtain its assurance that they were in order before instructing his servants to precede him to his new establishment. On arriving himself a few days later he found one of his servants in prison because another officer had construed the law differently from the officials who had been consulted. And yet the law which thus baffled the special care taken to ascertain and to observe it, was framed by a Government scrupulously jealous of native interests. So delicate a task it is to fit shoes for a people too primitive to show where they pinch.

When industry outgrows local supplies of coloured labour, coloured immigration is demanded.

Hitherto we have referred only to the indifferent quality of native labour; but a matter of even greater concern to employers is the question of its quantity. To see what happens we may take a concrete case. Whenever a new process of agriculture has been successfully applied to the soil, or some great discovery of mineral wealth has been made, a period of activity sets in, and there is a great demand for skilled workmen of all kinds. But the white men born in the country who have no skill cannot respond to the demand, and to meet it craftsmen come from all parts of the world. All this time money is freely invested to equip the industry. But it usually happens that as soon as development has reached a certain point, the supply of unskilled labour, which is the basis of the whole undertaking, begins to fail. Then the

lack of coloured hands causes investors to go without profits and skilled labourers without wages; and everyone begins to realise that South Africa is still an empty country, and cannot be developed without an influx of population from abroad. When this occurs all parties appeal to their Governments to address foreign or over-sea States, and to arrange with them for the wholesale recruitment and importation of coloured labour. In more than one instance Governments have acquiesced and have introduced coloured labour from abroad, subject to public supervision and sometimes aided by public funds. Incidentally the superstition which relegates rough manual labour to the coloured races is confirmed in the minds of the white people, and the system of caste becomes stronger than ever.

In time coloured labour invades the province of skilled labour.

The extreme case happens when a government is forced to go beyond the bounds of Africa itself and to introduce labour from Asia—the only other possible source of supply. As Asiatics are more intelligent and efficient than negroes they more readily acquire skill, and the number of whites required to supervise their labour diminishes. Moreover, the coloured man, though ranked and paid as an unskilled labourer, begins to do work formerly done by the white. On the other hand, the European artisan himself does less work, and finds it possible to content himself with a more general supervision, and to superintend a larger number of col-

oured labourers. It is true that the white man is still called the skilled worker and the coloured man the labourer, but names do not affect the practical effect upon the growth of population. So long as the coloured man fills the whole sphere of rough labour there is no space vacant into which white labourers of this class can be drawn. But the results are far from being merely negative; they mean, as we have seen, that the white man loses his monopoly of skilled labour. The coloured race which has been assisted by the State to occupy the whole basement of the industrial edifice begins to swarm into its upper storeys, and a certain proportion of the white population remains outside the building altogether. A position of great difficulty and instability is created, relief from which has yet to be found.

Attempts at land settlement are frustrated by the same causes

These same labour customs go far to account for the fact that the large sums spent in recent years on attempts to colonise South Africa with white men have not led to results of commensurate value. Most of the immigrants who colonise new countries have to earn their experience as well as their capital in the lower ranks of labour. In Canada the newcomer readily obtains employment as an agricultural labourer, and earns such wages as enable him to accumulate a small capital. At the same time he himself is learning how to farm, with the result that in a few years he has the money and experience to take up land and to start for himself. But

in South Africa, as we have seen, the lower ranks of labour are practically closed to the white man. He cannot therefore gain the knowledge of a new country by first-hand experience, and experience gained at second-hand generally plays him false. So it comes about that immigrant farmers often fail to make their operations pay, and the landowner often finds that the best way of deriving profit from the land is to farm it out to Kaffirs. In this way vast tracts in the Transvaal and Natal, which were originally divided into farms for white colonisation, are being brought under black settlement instead of white. A natural and valuable opportunity of establishing a permanent white population on the land is being thrown away.

The political ideas of the two societies are in conflict.

We have seen how the differences between the races have led to difficulty in social and economic matters; but the problem of reconciling their political notions is just as serious. The native's political instincts are patriarchal. To him his tribe is one great family, and he looks to its chief for direction as a child looks to its father. Underlying his whole political system is the assumption that someone has been appointed by Providence to guide him. The white colonist, on the other hand, holds as his political creed that the government can only derive its authority from the governed themselves. He claims to choose his own advisers and directors, and he expects them to submit to laws made by legis-

lators whom he himself elects. Each legislator is chosen to voice the interests of the voters who elect him; and he can never escape the obligation to say and do that which will please the men whose support he enjoyed at the last election and hopes to enjoy at the next. The legislature of a white, self-governing community is thus constituted on the principle of a joint stock company rather than that of a household, and it acts on the assumption that there is present a voice to speak for every interest concerned. The difficulty of making one and the same government embrace two such different systems is well summarised in the following quotation from the report of the Natal Native Affairs Commission:—

"It may well be asked with all deference whether Parliament is the best qualified body to make laws by which almost every act of these people is to be governed. It is apparent to all who understand the situation that the natives are being over-administered and that they are ignorant of many of the laws which affect themselves. . . . Considering its origin and composition Parliament stands virtually in the relationship of an oligarchy to the natives, and naturally it studies more the interest of the constituencies to which its members owe their position, than to those who had no voice in their election, more particularly when the interests of the represented conflict with those of the unrepresented. The need for an approach

to some simple, yet effective, form of personal control, as to what the natives best comprehend and what their natural propensities and habits require, has been commented on by several witnesses. The following extract bearing on the point is taken from the statement of one of our most intelligent and thoughtful magistrates:—'Uniformity in administrative principles should be specially aimed at. The treatment of the native in general must be of an autocratic nature. The masses are scarcely out of their childhood, and a certain amount of strict discipline is as essential to their well-being as it is to the well-being of any body, scholastic or other, under special government.'"

The situation thus depicted may be likened to that of a family of children who have been committed to the guardianship of a joint-stock company, at whose annual meeting of shareholders the children themselves have neither voice nor vote.

Dangers attending native enfranchisement.

At the same time the remedy is not easy, for the enfranchisement of the native is beset with difficulties. In every polity the crux of the problem of citizenship is to find a test which will not extend the franchise beyond those qualified to exercise it, that is to say, those who can be brought to conceive the State as having an interest distinct from and superior to their own. A voter incapable of some feeling of intelligent patriotism, who finds his vote in demand, naturally regards it as something

to be sold for a visible consideration. The dullest savage who is inaccessible to political reason is amenable to bribes, and whoever can bribe him with least scruple and most ingenuity secures his vote. Consequently a premature and wholesale extension of enfranchisement to the native might mean, not indeed government by black men, but the transfer of political control from white men with some zeal for good government to those among them who best know how to corrupt.

Constitutional antipathy of white and black.

Behind these differences, and indeed more serious than any of them, is the antipathy between the white and coloured races with which the governments in South Africa have to reckon. The feeling may be latent, but it is never dead. Race feeling is of different kinds. Antagonism may manifest itself between two peoples whom chance, not inclination, have brought together, like the Saxons and Normans. They may none the less be capable of co-operating for a common political object and of becoming, in course of time, one people. The conflict between the chief white races in South Africa is of this ephemeral kind. But little reflection is needed to see that the race question between black and white in South Africa arises from an antipathy whose roots strike deeper. The European and negro races must have diverged when their common ancestors were scarcely entitled to the name of man. For ages the two races have followed separate paths, which never crossed until each race had changed as

much almost as men can change without losing attributes common to humanity. This antipathy aggravates the difficulty of adjusting the legal, social, industrial and political relations of the two peoples; because it always lurks in readiness to seize upon any failure in the process of adjustment, and to assert itself in some violent and deplorable outburst.

The mixed population another difficulty.

No account of the duties of South African government can ignore the special problems imposed upon it by race dualism or the immense possibilities of blunder which such problems present. It might be supposed that the difficulty is a temporary one at most, and that a solution will offer itself automatically as the races mingle. But, as a matter of fact, it seems as though such fusion as has already occurred has operated to increase rather than to lessen the difficulty. The mixed race is excluded from the pale, not only of white society, but from that of black as well, and holds itself aloof from both. It stands apart practically as though it were a third race. Not only so but the presence of a mixed community lays on government the invidious task of deciding whether particular persons are to be classed with the white, coloured or black populations. This difficulty is reflected in the number of different definitions of the word "native" which are to be found in South African statute books; none of them has succeeded in finally determining the frontiers of the three races.

The political institutions of South Africa are unsuited to the problem,

With this statement of the problem before us, we may now enquire how far the system of government in South Africa is fitted to solve it. As we have seen in Chapter I., Great Britain acquired and held South Africa because the command of its coast was necessary for the protection of her dominions and trade in the East. Her statesmen were less interested in the country for its own sake than for that of another, and the problems of its government were never fully before their minds. At the outset they made the mistake of thinking that the coast could be separated and held apart from the interior. In the next place the territory was split up into provincial areas, a step in itself necessary and open to no objection so long as there existed one government, competent to maintain harmony in their relations and in those of the two societies co-existing throughout the country. The next step, however, was to invest the provincial governments with attributes of sovereignty, whether as republics or as colonies; and to withdraw the Imperial power into the background. All this time, however, the Imperial Government retained a direct responsibility for certain portions of the country. In other words, while it divided South Africa into provinces and equipped them, or left them to equip themselves, with forms of provincial government, it provided no government for South Africa itself. This mistake has proved in the event one of the costliest that Great Britain has ever made.

involving a mischievous division of responsibility between the Imperial and colonial governments.

To begin with, the separate States acting in isolation were not strong enough to exercise the full functions of sovereign government. The strongest of them all proved unequal to the task of controlling Basutoland, and handed it back to the Imperial Government. This admission of weakness on the part of the European community in South Africa was a direct result of its dismemberment; for no one can imagine that the white people of the Cape Colony, Natal, the Transvaal and the Orange Free State could not, even in 1883, have forced disarmament on the Basutos if they had all applied themselves to the task under the direction of a single government. South Africans, too weak to set their own house in order, grew accustomed to leaning on the Imperial power; and the tacit understanding that in the last resort British troops and money can be called into action to enforce the policy of the white communities, has seriously impaired their sense of a responsibility which ought to be theirs alone. The effects of the vague compromise which was arrived at have made themselves powerfully felt in England as well. So long as the British taxpayer may be called upon to pay for the suppression of native revolts, the Imperial Government has no choice but to have a native policy of its own. Ideas upon native questions which are conceived in England, 6,000 miles away from the scene of action, inevitably differ from those entertained by the colonial govern-

ments. The most excellent principles may be capable of the greatest mischief if they are not suited to the facts of the case. The man on the spot imagines that the home government makes no attempt to understand the real difficulties and dangers with which he is faced, and the home taxpayer is equally apt to suspect that the broad principles of justice are being sacrificed locally to panic or profit. Such differences are most dangerous at the periods of crisis which inevitably force them to the surface. A collision with natives almost always means a collision with British opinion. This unfortunate coincidence encourages the natives to believe that the Imperial Government is on their side, and exasperates the white community in its attitude towards the black. In the inland territories colonial opinion has been seriously warped by mere reaction against the views of the British public, always well-intentioned but not always well-informed.

The same problem presented itself in a different shape to each government.

We have seen how the unity of control, which might have produced a stable and consistent native policy, was lacking; we have now to see how the colonial governments addressed themselves one by one to the problem so far as it came within the ken of each, and what they made of it. It so happened that the territorial boundaries were fixed in such a way that each local government was left to deal with a different set of conditions, and each fell, therefore, into a different attitude towards the natives. South of the Zambesi

the proportion of white inhabitants to coloured is more than one to five. In Cape Colony there are more than one to four. In Natal there are less than one to ten. Natal, moreover, is peopled by the most warlike tribes in South Africa. The position of the white community in Natal is far weaker than in the Cape Colony; and we may therefore expect to find that it views the native question in a different light.

The Cape Colony.

The policy of the Cape Colony is conceived in the belief that the problem will find its solution in narrowing the gulf which divides the races. It does not assume that the mass of natives are at present on the same level as Europeans, nor even near that level; but merely that there is nothing in the nature of things to prevent them from attaining it so nearly as to be capable of absorption in the same polity as the white man. To this end, therefore, the government applies its energies in a variety of ways. It endeavours, so far as possible, to eliminate all special laws applicable to the native only, and to render him amenable to those of the white. The process is, of course, less rapid in the native territories of the Transkei than in other parts of the colony, where the European infusion is larger. But the pace must everywhere depend on local conditions, and in some places attempts to advance too quickly have ended in a reversion to the methods of the Transkei.

Native administration in the Transkei.

Native law, though recognised in the Cape Colony, is not codified. A special penal code

is enforced in the Transkeian territories, but it applies to all their inhabitants without distinction of race. In the Transkei it has also been laid down that where the parties are natives civil cases shall be tried according to native law. Even beyond the Transkei there are courts such as those of the special magistrates at King William's Town, at Keiskamahoek and Middeldrift, where native law is administered in the trial of purely native civil cases; but although there has never been any difficulty in carrying out the decisions of these tribunals, they are, nevertheless, not enforcible at law. Generally speaking, the scheme of government applied to the Transkeian territories is accommodated to the patriarchal ideas of the native. They are placed under the administration of a single chief magistrate, who is the visible representative of government for the whole territory. The Governor of the Cape Colony is empowered to legislate, on the advice of the cabinet, by proclamation for the Transkei, so that he holds the position of a supreme chief who is able to make laws as well as to enforce them. On the other hand, persevering efforts have been made to mould the Transkei natives to European methods of government by introducing a representative system of local administration. A number of district councils have been created, consisting each of six members, of whom four are nominated by the district headmen from among their own number, to be recommended to the Governor

for appointment. The other two members are selected by the Governor on his own initiative. The resident magistrate of the district is *ex-officio* chairman. Each of the district councils nominates two members for appointment by the Governor to a general council, which deals with local affairs under the chairmanship of the chief magistrate. This procedure, by which the natives nominate representatives for appointment by the Governor, is significant of the process of transition from ideas of patriarchal autocracy to those of self-government. The general council and the district councils deal with roads, bridges, dams and other public works, tree planting, the eradication of noxious weeds, stock disease, general and industrial education, pounds, irrigation and public health. The district councils are concerned only with local matters, the general council with matters which cannot be confined to one district. The general council likewise deals with labour recruiting, and levies the rates from which the expenses of the district councils, as well as its own, are defrayed. Elaborate as this machinery seems, the natives none the less retain many of their primitive conceptions. Most of the land, for instance, is held in communal ownership, but the government is doing what it can to educate the native to the European notion of individual property.

Discrimination avoided elsewhere.

As regards the remainder of the Cape Colony, we may say, speaking broadly, that the laws discriminate between native and

European only so far as is felt to be absolutely necessary in the natives' interest. The chief example is that of the law which imposes restrictions on the use of liquor by natives.

Education.

Probably the most important influence in the raising of the native population is education. The relative liberality with which the Cape Colony has treated native education will be seen from Statement No. VII., taken from the report of the South African Native Affairs Commission, 1903-5. From this statement it will be seen that in 1903 the Cape Colony, with a third of the total native population, was spending on native education more than twice as much as the whole of the rest of South Africa where the other two-thirds live.

Statement No. VII.

The native franchise.

The intention of the policy which we have described is that as soon as the native has reached a certain level of civilisation he is to share in the government of the country with the white. For the purpose of qualifying for the franchise both races are submitted to exactly the same test. If a native can sign his name and write his address and occupation, and occupies property worth £75, or as an alternative has earned wages at the rate of £4 3s. 4d. a month (£50 a year), he is admitted to the fullest political privileges of the white. He has also the same right to stand for election as the white, though the privilege has not, as yet, been exercised. The policy of the colony is summed up in the famous formula: "Equal rights for all civilised men."

Educational and property tests ineffective.

But it is doubtful whether, in pursuit of its ideal, the Cape Colony has succeeded in devising a satisfactory method of determining when the native has attained a level of civilisation which entitles him to take his place in politics beside the European. Can the existence which any man in South Africa, whether black or white, must lead upon an income of £50, or in premises rented at £7 a year, be really called civilised? Or is ability to trace the characters of some dozen words a sufficient test of civilisation? The value of the test must be judged not so much by its intention as by its practical results. The hypothesis is that a real knowledge of reading and writing is required in order to obtain a vote. But the sole aim of election agents is to secure the registration of all voters, coloured or white, who are likely to support their candidate, and those on one side or the other will naturally do all they can to secure a vote for every native who desires it. It is said, indeed, that when a new voters' roll is being prepared, party agents establish schools where natives are taught mechanically to trace the prescribed formula, a trick easily learned by an imitative race and requiring no knowledge of writing nor any understanding of the symbols produced.

The coloured people treated as whites.

The policy adopted in the Cape towards the intermediate race of coloured people is to treat them so far as is possible on the same footing as the whites. They are even exempted from the special laws which are intended

to protect the native from his passion for liquor. But the Cape coloured people are so intemperate that it is doubtful whether they have yet reached the point of civilisation at which men have more to gain from liberty than restriction.

Natal.

Turning to Natal we find its law, so far from avoiding distinction between black and white, appears to emphasise it. It is only in Natal that the body of native law has been reduced to statutory form. This collection does not purport to be a penal code, but it penalises certain acts on the part of natives, which are not usually made criminal in civilised societies, such as prostitution, adultery, illicit intercourse with a widow, the seduction of an unmarried girl, remaining in a kraal after being requested to withdraw, or wandering about a kraal at night without good reason. Girls and women found roaming from their own kraals without good reason, are also punishable. All natives are subject to this body of law unless they have obtained exemption, which is granted under certain conditions. Under the constitution the Governor of the colony is supreme chief, and exercises all the powers of a chief under native law. In practice the authority of the supreme chief is wielded by the Governor in executive council or, in other words, by the cabinet of responsible Ministers. None the less, as a matter of law, the Governor, in his capacity as paramount chief, may act on his own authority and contrary to the wishes of

his own cabinet. In other words, it is open to him to give effect to the policy of the Imperial Government in cases where that does not coincide with that of the local white community. As supreme chief he may appoint and remove native chiefs, and call natives to arms or to supply labour for public works. He may fine natives for disobedience to his orders. He is not answerable for his acts to any court.

Native jurisdictions.

Native chiefs may try all civil suits except divorce cases, between members of their tribes. They deal with petty offences, and may inflict fines up to £2. Beyond this they may only report on crimes. Appeals from their jurisdiction lie to the magistrates. There is also a native high court, with the full powers of a supreme court in purely native cases, and an appeal therefrom lies straight to the Privy Council. In one instance the native high court has held that a case fell within the jurisdiction of the supreme court of the colony and not within its own. The supreme court took exactly the opposite view, so that where the two courts disagree on the question of jurisdiction, suitors may be compelled to go to the lengthy and costly proceeding of moving the Privy Council in England to decide whether the supreme court or the native high court is to hear their case. This anomaly would disappear if South Africa had a single court of appeal.

Other features of Natal policy.

Natal's conservative disposition towards her black subjects is shown in other ways as well. Statement No. VIII. indicates that in 1903 the Cape Government was raising by way of taxation 17.7 pence a head of the native population, and was spending 8.03 pence on their education. Compared with these figures Natal was raising 43.05 pence and spending 1.9 pence. The pass system is also far more widely enforced. Natives exempted from the operation of native law can obtain the franchise upon certain conditions, but these are so rigorous in themselves and so jealously applied that, as a matter of fact, only three natives have ever obtained the vote.

In every direction, therefore, we look in vain for any attempt to assimilate the natives of Natal to the civilisation and institutions of the European. Nor is this any matter for surprise. The small white community, surrounded by a black population ten times as numerous, cannot afford to realise the ideal which inspires the Cape Colony. Its policy is bound to be negative because it is dominated by a sense of the imperious necessity of maintaining, at all costs, the supremacy of the white. The result is that while the Cape Colony moves steadily towards the abolition of caste distinctions, Natal adheres persistently to their rigorous maintenance.

The inland colonies.

In the Orange River Colony there are less than two, and in the Transvaal less than four coloured persons to each white inhabitant. But though the white populations of these col-

onies are strong compared with that of Natal, their ideas are coloured by traditions inherited from the settlers who migrated inland to escape the native policy adopted by the Imperial government in the Cape Colony. For this reason their attitude towards the Kaffir resembles that of Natal. In the Transvaal the Governor exercises powers of a supreme chief, which are similar to, but somewhat less definite than, those of the Governor of Natal. Though native law is not codified, it is administered where both parties to a suit are natives, in so far as it is not repugnant to justice, morality or civilised principles. The laws of the Orange River Colony do not recognise native law and custom, although the courts take some cognisance of it. The table of expenditure shows further divergencies from the policy of the Cape Colony. In 1903, when the Cape was raising 17.7 pence a head by native taxation and spending 8·03 pence a head on native education, the Transvaal was raising 82.9 pence and spending 1.5 pence, and the Orange River Colony was raising 43.6 pence and spending 1.8 pence. In both colonies the pass system is widely applied, and the franchise, municipal as well as parliamentary, is limited to white men. In the Orange River Colony the native is forbidden to hold land, and he only escaped a similar prohibition in the Transvaal because the custom on the subject was mistaken for law and no prohibition was ever enacted. In both colonies the tendency is

always to rank the coloured man with the black rather than with the white. The mixed population, as well as the black, are far more sober than those of the Cape Colony, thanks to the rigorous enforcement of the laws which forbid them liquor.

Policies north and south of the Orange river compared.

As the native policy in the Cape is expressed in the watchword, "Equal rights for all civilised men," so is the prevalent sentiment in the inland colonies contained in the blunt declaration of the republican Grondwet, that "the people will not tolerate equality between coloured and white inhabitants either in Church or State." The distance between these doctrines is the measure of the gulf that now divides the communities developed under separate governments north and south of the Orange river.

Rhodesia.

Beyond the Limpopo the small European population is in a position somewhat similar to that of the white community in Natal, and as a consequence their attitude towards the Kaffir is much the same. The government of Rhodesia, however, was organised from the Cape, and is administered subject to Imperial control, so that its native policy approximates to that of the mother colony. Colour, for instance, is no bar to the franchise.

The native protectorates.

Hitherto we have treated methods of native administration as falling under one or other of two heads. But a third and perfectly distinct policy is pursued in the protectorates directly governed by Great Britain. Imperial control is pushed only to the point of securing

the maintenance of order and the suppression of barbarous customs; and to this end a resident commissioner, a staff of magistrates, and a police force are retained in each protectorate. Otherwise the native is left free to develop his own tribal life, and no attempt is made to assimilate it to the institutions of European society. In Basutoland and the Bechuanaland Protectorate native law is administered, but in the latter it is laid down that where native law is found incompatible with peace, order and good government, the court may decide in accordance with the law that would regulate the decision if the disputants were European. Basutoland contains some of the finest agricultural land in South Africa, and in this instance the native society, taking advantage of the education imparted by missionaries, is being affected by the influence of European civilisation without coming into close juxtaposition with a white community. Its most characteristic feature, however, is the Basuto council, consisting of an inner ring of chiefs and an outer ring of the common people, who all assemble under the presidency of the resident commissioner. Such councils are an ancient native institution, and are to be found in a less conspicuous form in parts of the other protectorates. But no attempt is made by the Imperial Government to supersede the jurisdiction of the chiefs, whose authority remains firmly established. If the Basutos are advancing, it is on lines of their

own, and not in the direction of democratic government, individual tenure and the other institutions peculiar to European civilisation.

No preference for Cape policy implied.

The native policy pursued by the Cape Colony is more developed than any of the others, and inspired by a far more definite aim. It is fair, therefore, to treat of it at greater length than the others in any comparative account; but such treatment does not imply any commendation of the Cape policy over and above the rest. Indeed, in this enquiry we are not in search of a native policy, but only of a government capable of conceiving and applying one on a scale adequate to the dimensions of the problem which confronts South Africa.

Conflicting policies bewilder the native,

As matters stand, at least three distinct programmes for their future are presented to the natives' mind. At the great centres of labour Kaffirs from one locality are now brought into frequent contact with those of another. Apart from this it is well known that communications are constantly exchanged between the various tribes throughout South Africa. The result is that the enormous native community as a whole is surprised and disquieted by the different and confusing ideals held up before it. The Kaffir in the northern colonies who sees his kindred in the Cape Colony less heavily taxed, less harassed by pass regulations, entrusted with powers of local government, and courted at election times by white candidates for Parliament, is

bound to think that black men are properly entitled to rights denied to him. In all the colonies the natives cast wistful eyes at the freedom from European interference enjoyed by the Basuto and the Bechuana under Imperial protection. They apprehend the existence of another power, higher, and apparently more beneficent than the local governments, which they dream may some day be moved to place them in a similar position to the Basutos. Thus throughout South Africa the mind of the native is unsettled on the question of his own relations to the European and of the nature of the government which he is expected to obey.

and divide the sympathies of the whites.

Besides producing discrepant results on native society, the differences of policy react also on the various white communities and tend to foster discord between them. A citizen of the northern colonies resents the privileges and position accorded to the native in the Cape, and foretells the time when the coloured vote will outnumber the white. The Cape colonial retorts by contrasting his own progressive ideas with the policy of negation adopted by his neighbours, and the tranquillity of his own native territories with the recurring unrest in Natal. The wider the difference in the native policies the more does the sense of kinship decline.

Unity needed in the end, rather than the means.

No one who realises the varying conditions to be found in different parts of South Africa will fall into the error of supposing that uniformity in the methods of native adminis-

tration is either possible or desirable. It is not uniformity of method that is needed, but rather singleness of purpose. The meaning and importance of this distinction is best explained by applying it to any of the existing areas within the jurisdiction of one government. Taking for example the Cape Colony, the largest and oldest of these areas, we find that as the conditions which exist in the Transkei differ from those of the Western province, so do the methods employed in each. As the materials vary, so do the instruments; but the end to which they are applied remains the same because they are directed by one political brain. Where several political brains are independently at work within one and the same territory no such unity of purpose can exist.

The S.A. Native Affairs Commission has not led to practical results.

These considerations account for the fact that the Native Affairs Commission appointed by all the colonies of South Africa in 1903 has done so little to reconcile their policies. After two years of enquiry the Commission produced a series of recommendations, most of them unanimous; but in point of fact hardly anything has been done to carry them into effect. No community can act upon abstract resolutions. Each considers the conditions within its own frontiers and applies its energies to deal with these alone, without reflecting that the results may affect conditions beyond its borders, for which it feels no direct responsibility.

CHAP VI.

South African conditions compared with those of India.

The various colonial policies have developed so gradually that the conflict they involve has scarcely attracted the attention it deserves. Men only see what is done within their own doors, and fail to recognise how incompatible it is with what their neighbours are doing elsewhere. The curious and trivial features of life are the easiest to note. Those which are common and all pervading are at once the most essential and the most elusive. The best way, therefore, to realise what is going on all day and every day before one's eyes may be to picture what would happen if the political conditions of South Africa were transferred to another country. If no central government had been established in India, the governments of Madras, Bombay and the other provinces would each have pursued a line of its own. Some of them, regarding the natives of India as permanently unfit to manage their own affairs, might have set themselves to create a strong, intelligent and beneficent bureaucracy of English officials. Others, believing that the natives could manage their own affairs, might have kept that ideal steadily before their eyes and have encouraged them to share in the work of government. Either policy might be sound if pursued consistently throughout British India, but no argument is needed to show that if both were attempted side by side they must lead to disaster. Local differences there must always be; the Bhil of Central India and the Bengali of Calcutta are not, and can-

not be, handled in precisely the same way; but the point of importance for us is that there is unity of purpose below the surface. If one province were administered on Prussian and another on Radical lines nothing but chaos could follow. As it is the Governor-General in Council, acting under the direction of the Imperial Government, is supreme in fact and law. The local governments are held together as parts of one immense machine, and are controlled by a single and coherent purpose. The purpose may be mistaken, and may involve the country in ruin. Defeat may await the most perfectly organised force, but not the certain defeat which awaits an army whose several divisions are acting under separate commands and on incompatible plans of campaign.

Unity of purpose in native policy cannot be provided for South Africa as in India by the Imperial government.

From the example of India we may learn the end to be sought, but not the means of attaining it. The native policies of the South African governments cannot be unified as in India by a control imposed by the Imperial government from without. The white community in South Africa differs from that of India in two fundamental respects. It is far larger in proportion to the native population, and it has taken permanent root in the country. Any scheme of government which seeks to regulate its domestic affairs from without is so utterly at variance with its primary instincts as to be quite unworkable in practice. Not only would the European population become ungovernable except by

force, but they would be driven into an attitude of hostility towards the natives. Those who reflect upon the causes and consequences of the great trek will recognise that if one ruling purpose is to inspire the native policy of this country that purpose must spring from within and not from without. The unity of British government cannot avail to redress the results of South African disunion.

If the whites in S.A. are to control native affairs their policy must be tempered by a feeling of complete responsibility,

To begin with, at any rate, the task of regulating the relations of the two societies will rest in the hands of the superior race; for the natives who are fit to share in it are as yet so few as scarcely to count. In this, as in every course, there are risks that cannot be ignored. It is not so much that the interests of the natives will be consciously set aside as that they may be overlooked and forgotten. While one society will always be pouring its views into the ears of a kindred government, which speaks its language and thinks its thoughts, the other will either be dumb or fail to make itself heard or understood. This danger will never be absent. In India, the safeguard against it is a lively sense of responsibility on the part of an official service directed by the Imperial power which commands from above. But in South Africa, though the Imperial power may exhort and interfere, it cannot command. The only force that can be trusted to quicken the conscience of the white rulers is a sense that the consequences of their own mistakes, however terrible, must be borne by themselves. But

such a feeling can never exist until the white community is unquestionably strong enough to bear the burden of its acts. The surest road to ruin is the rule of a frightened oligarchy; and worse even than external interference is a makeshift which leaves a host of savages to the control of a white community, not too certain of its strength. No wise or far-sighted policy is to be expected from rulers who live in fear of their subjects; for in the interests of the natives themselves the governing class must be prepared on occasion to enforce measures which time and experience alone can justify to primitive minds.

which cannot exist in divided communities too weak to handle the problem.

So long as the European and coloured societies are broken up into many unequal parts, so that handfuls of whites find themselves isolated amongst large and powerful tribes, there will be places where the power of the white to control the black is in doubt. It is not a question of physical force alone. The able-bodied whites of a small colony may be numerous enough to quell a native rising, but the industries of the country may come to a standstill meantime. Fear of ruin rather than of physical danger begets infirmity of purpose, and drives the small communities to lean unconsciously on their neighbours or on the Imperial power, with the inevitable result that their sense of responsibility is weakened. Yet none of the powers with whom they are in tacit alliance is able to control their policy; and when the

Imperial Government attempts to do so the white community is exasperated beyond measure and the natives are encouraged to ignore its authority.

The white population if united would be strong enough to bear the whole responsibility.

If, however, the white population were once united to deal with the problem as a whole, all these conditions would be changed. Not only would a single government be animated by a single purpose but, backed by a united people, it would cease to question its own strength. Such a government, and no other, could be left to handle the problem with a sense of full responsibility because it would know that all its mistakes must be paid for in South African money and lives.

A right native policy cannot be found before union but only after it and by means of it.

Further than this it is needless to go. To imagine that a national government can only be attained when a common native policy has been conceived and accepted is a mischievous delusion and inversion of ideas. It is beside the mark for South Africa to search for a native policy till she has devised a national government. When once that is achieved the other will follow as the day follows the night.

Immigration.

Relation of immigration to the native question.

In stating the native problem we have attempted to show its effects on the economic relations of the white and coloured societies. It is these relations which determine the immigration policy of governments, which find their population unequal to the demands of their growing industries. But in describing how the various governments have tried to

deal with the different elements of the native problem, the immigration question has been left for separate treatment. We have now to see how the various governments have handled it.

Immigration in the Cape Colony

In the Cape Colony the government has never organised the importation of coloured labour from oversea since the British occupation; but in the old days Malays and West Coast natives were freely introduced as slaves, and these became the forefathers of certain elements in the present population. Large numbers of natives are now recruited for labour in the Kimberley mines, but only in Basutoland and other British territories. This does not affect the balance of population in British South Africa.

In Natal.

Perhaps the most striking feature of native administration in Natal is its apparent despair of improving the efficiency of the native as a labourer or of finding a place for him in the industrial system. In spite of having the largest Kaffir population in proportion to her size, Natal has yet found it necessary to create a statutory trust supervised by Government, and provided with public funds, for importing indentured labour from India. Each labourer is indentured to serve for five years for housing, rations, and a monthly wage, in the case of men beginning at 10s. a month and rising to 14s., and in the case of women beginning at 5s. and rising to 7s. Low as these terms appear, they have proved sufficiently

attractive to induce the Indian coolie to leave his home in thousands. At the close of their indentures the labourers may re-engage for a further term of two years, or return to India, or remain in Natal subject to an annual poll-tax of £3 in addition to the universal poll-tax of £1. As a matter of fact, the payment of these taxes is to some extent evaded. In the course of the last thirty years Natal has thus accumulated an Indian population of about 108,000, including nearly 50,000 women. Of these 42,000 are still under indenture. In the meantime the white population remains at less than 100,000.

In the Transvaal.

The Transvaal has done far more than Natal to encourage habits of industry in the native, if only because its need for labour is greater. But the local supply is quite unequal to the demand, and the Transvaal mines, like the Natal plantations, rely on enormous forces of imported coloured labour. The natural anxiety of the neighbouring colonies to keep their local supplies of labour to themselves has had the effect of driving the Transvaal industries to draw, first on Portuguese territory and afterwards on Asia. But few of these labourers remain permanently in the country, and its most important industries are, therefore, founded on a migratory proletariat, most of them domiciled in foreign countries, and some in the neighbouring colonies of British South Africa. The recruitment of rough labour for the mines is almost entirely con-

centrated in the hands of one great co-operative agency, the working capital for which was subscribed by the various companies in proportion to their labour requirements. The Witwatersrand Native Labour Association recruits coloured labour throughout British South Africa south of the Limpopo, but it draws its largest and most valuable supplies from Portuguese East Africa. The natives from the Mozambique provinces do not object to work underground, and are naturally more industrious than the other South African natives. Recruiting is controlled by agreements between the two governments. These provide that for every native recruited within their frontier the Portuguese authorities shall receive 13s. 6d. About 36,000 natives are enlisted annually in the Mozambique provinces, and the wages spent there on their return are estimated to amount to £750,000 a year. They are not, however, obliged to leave the Transvaal when their indentures expire, though most of them do so. No similar capitation payments are made to the governments of British South Africa on natives recruited from their territories. The Rhodesian government, however, imposes a tax of 5s. a month on the pass of every native recruited for employment beyond its frontiers, and the result is that no recruiting takes place from Rhodesia. Its action is a good illustration of how the division of South Africa into separate governments tends to keep the labour supply in watertight compartments and to

prevent it from finding its own level. The recruitment of labour in China was carried out under treaties between that country and the Imperial government. It was subject to the condition that the labourer should return to his home when the indentures expired. Under this scheme about 60,000 labourers were brought to South Africa. Recruiting has now ceased, and the whole of the 25,000 labourers who still remain will have left by January, 1910.

White immigration of male settlers.

We have seen how the maintenance of a system which confines unskilled labour to coloured men naturally leads to coloured immigration whenever the indigenous supplies fail. But to judge correctly the influence which the native question has on immigration it is equally necessary to consider the efforts which have been made to increase the white as well as the coloured element. The subject may be passed in silence so far as the coast colonies are concerned, simply because, with the exception of some slight assistance afforded to female immigration, it is difficult to point to any deliberate measures for promoting white settlement. In both the inland colonies some efforts in this direction have been made of recent years. But the process is a difficult one. These colonies did not enjoy the same advantage as the north-west of Canada, which started with a stable government, competent to distribute the land on scientific and economic lines; and as a result of previous

appropriations and assignments there is little public estate of any value which is available for colonisation south of the tropics. The sum of two and a quarter million pounds spent upon land settlement in the Transvaal and the Orange River Colony may be taken as the cost of purchasing land, providing capital, and maintaining the settler, until he has gained the experience which the colonist in Canada and Australia usually earns as a hired labourer. How much of this expenditure will be recovered it would be premature to say; as the fruits of it, some 1,910 men, women and children have been established in the two colonies, of whom no less than 907 were born in South Africa. Viewed as an immigration scheme, it has therefore added about 1,000 souls to the white population. The administration of the settlement funds and farms has been placed for five years in the hands of boards, which will remain under the direction of the Imperial government until their expiry in the year 1912, when their responsibilities will lapse to the colonial governments.

Of female settlers.

White immigration has been fostered by other agencies than that of the State. A useful form of it is promoted by certain societies, to which the governments of the Cape Colony, the Transvaal and the Orange River Colony afford some indirect support. In every colony and protectorate the white women are fewer than the men. In the country districts the death rate amongst married women is high,

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and the remarriage of widowers once or twice is frequent. Women often marry and vacate their situations as teachers, clerks and servants; and the demand for substitutes is continuous even when trade is bad. Naturally women are attracted to the country to fill the vacant posts, and societies have been formed with the wise and practical object of turning this demand to the best advantage. These agencies set themselves to ascertain and make known the character and conditions of employment, to receive applications from employers, and to select the candidates who present themselves. Thanks to their activity some 3,457 women have been added to the white population.

These schemes due to Imperial rather than South African opinion.

It is idle to close our eyes to the fact that both these schemes for promoting European immigration are exotic. Neither of them was the natural and spontaneous outcome of public opinion in South Africa itself. They were initiated at a time when elective institutions were in abeyance, and when the Imperial government was directly responsible for the administration of the inland colonies. One of the schemes, as we have seen, has been reserved for Imperial control for a further period of five years. It is essential, however, to mention them in any account of the action taken by the governments of the inland colonies to control the composition of their population.

Methods of controlling spontaneous immigration.

The next point to consider is the methods adopted to control the influx which seeks of

its own accord to enter from oversea. To regulate immigration into a country so great as British South Africa might seem a difficult task. But its inland frontiers are guarded by the tropics on the north and by deserts on the west, and its coasts give access to immigrants at barely a dozen ports. The number of white persons who entered and left the various British ports in the year 1907 was as follows:—

	Immigrants.	Emigrants.
Cape Town	21,975	30,660
Durban	11,414	14,939
Port Elizabeth	2,284	1,967
East London	2,069	2,585
Port Nolloth	144	267
Other ports	105	76
	37,991	50,494

It is clear that Cape Town, Durban, Port Elizabeth and East London are the only ports of consequence, and the problem thus narrows itself down to very tractable dimensions. No doubt the foreign ports of Delagoa Bay and Beira are a means of access to the British provinces. Indeed it is known that criminals who have been turned back from British ports do insinuate themselves into the inland colonies through Delagoa Bay. But no large number could penetrate by way of foreign ports otherwise than by rail, and the railway traffic can to some extent be supervised. No country of equal size, with the possible exception of Australia, could control immigration

more easily than British South Africa, if it had a government which could deal with the territory as a whole. As it is, its natural advantages are being lost through disconcerted and haphazard action.

The nature and working of immigration laws.

Immigration into the Cape Colony, Natal and the Transvaal is regulated by laws which authorise the governments to exclude persons unable to write out an application for permission to enter, in some European language, including Yiddish. They may also close their doors to paupers (that is to say, persons who cannot produce £20 in cash), criminals, lunatics, persons of immoral profession, or suffering from loathsome diseases, or dangerous to peace, order and good government. The Orange River Colony, on the other hand, still relies on a peace preservation ordinance, which confers on the government indefinite powers to regulate the entry of persons into the colony.

Difficulty of regulating overland immigration,

But if an immigrant has once established himself in the Cape Colony or Natal, it is very difficult to exclude him from any of the inland colonies, the laws of which cannot operate beyond their own boundaries. The natural result is that where the governments differ on matters of policy, and one admits or even encourages immigrants whom its neighbours desire to exclude, the latter are driven to protect themselves by elaborate expedients. In framing its own immigration law the Cape Colony relied upon a language test to hinder the influx of Asiatics, including Chinese. But when the Transvaal imported

Chinese in large numbers to the Rand, the Cape government, fearing their escape into its own territory, passed a law forbidding Chinese to enter or reside in the colony, unless they held a certificate which was only granted to such of them as had already acquired a domicile there. These certificates bear the finger prints of the Chinese to whom they are issued, a plan which experience has shown to be the only sure means of preventing their use by others than the lawful holders.

especially from Natal to the Transvaal.

The accumulation of 108,000 Asiatics in Natal presented a far more serious problem to its northern neighbours. The Orange River Colony and the Cape Colony are protected by Basutoland and Pondoland, native territories which the Indians dare not or do not traverse. But there is nothing to restrain them from crossing the northern border, and it was found that the Indian population of the Transvaal was steadily increasing. The Transvaal government was therefore driven to the same expedient as that to which the Cape Colony resorted to escape a possible influx of Chinese. It passed a law requiring Asiatics lawfully resident in the Transvaal to register their names, and to take out a certificate bearing finger impressions, by means of which the identity of the holder could be ascertained at any time. This scheme was very distasteful to the Asiatics, but experience has shown it to be the only means of effecting a necessary object. The action of the Transvaal in this respect is important,

because it establishes a machinery which, however objectionable in itself, will enable the government of united South Africa to limit the Asiatic population domiciled in Natal to that part of the country. Without it the difficulty of including Natal in the South African union might have been insuperable.

Responsibility of government for determining composition of South African society.

The efforts of South African governments, whether to promote or to control immigration, have one feature in common. All alike point the moral that national impotence waits on disunion. The white people of South Africa cannot, while divided, prescribe the relations which are to obtain between themselves and the coloured races. But yet, while they remain inactive, economic conditions are silently dictating the type of society to exist in this country, and determining the elements of its future population. We have seen something of what those conditions are, and we are bound to consider the issues to which they tend. The United Kingdom has a population of 363 and India a population of 158 to the square mile. British South Africa to-day has less than six inhabitants, white and coloured, to the square mile. Who can say that in the course of time it may not support many times that number? Let us venture on what is by no means an absurd prediction, and assume that in a hundred years' time the country may contain forty millions of people, and in fact be the home of one of the great collections of the human race. The precise figure is of no moment. It is not the quantity,

but the quality, of a population that matters in the long run. The world is richer for a population of twenty millions, half of whom are Europeans, than for a population of forty millions, of whom nine-tenths are negroes and Asiatics. The present proportion of white to coloured in South Africa is one to six; and how far the future population is to be drawn from the higher and how far from the lower races of mankind is the issue which hangs on the native problem of to-day. The answer depends upon whether South Africa accommodates her industrial system to the habits of the whites or to those of the coloured races. If the system is one in which the lower races thrive better than the higher, the coloured element will grow at the expense of the European. South Africa will then sink to the level of States such as those of central and southern America—republics in name and not seldom tyrannies in fact, unequal to the task of their own internal government and too weak to exert an influence on the world's affairs. If, on the other hand, the scheme of society allows the white population, instead of the coloured population, to be built up from outside as well as from its own natural increase, so that in the course of years the one gains upon the other, this country will gradually assume its place beside England, the United States, Canada, or Australia, as one of the powers of the world and share in the direction of its future. For many years to come the action of government may shape

the course of events, and no greater responsibility could rest upon this and the coming generations; but eventually the day will arrive when the balance will have inclined irretrievably one way or the other, when no government can alter the work of the past, and when the composition of society in South Africa will be fixed as unalterably as it is in Europe or in Asia to-day.

Public estate.

Everything, therefore, points to the conclusion that the promotion and control of immigration is a matter of supreme importance, which cannot or will not receive attention until it rests in the hands of a national government. In Canada and Australia the moral is the same. There, as here, the instinct of an immigrant who has made a place for himself in the country is to close the door behind him. He is soon concerned to protect his own labour from competition; indeed, Canadian labour organisations are continually pressing the Dominion government to restrict immigration. With the native-born the desire to keep his country to himself is stronger still, for to him the ideas and habits of newcomers born in a distant country are seldom entirely congenial. The narrower and more selfish impulses of the public mind have always more influence with provincial than with national parliaments. Local governments may offer lip-service to the policy of the opened door; but in fact they adopt a policy of inaction, which really means that they are acquiescing in the absurd claim ad-

vanced by first comers to reserve for themselves great portions of the habitable globe. Only a national government faced by national issues will realise how quickly ungarrisoned positions are occupied, not only in war, but by peaceful invasions, far more subtle and far more difficult to resist. The habitual difference of attitude on this point, between a central and a local government, is a strong reason for placing the control of the public estate in the hands of the former, for land settlement is always one of the most important objects of immigration. Australia presents an excellent illustration: the Commonwealth government has secured control of immigration, but finds itself to a great extent impeded in its efforts to control the composition of society by the fact that the public lands have been left in control of the State governments.

Functions incidental to the composition of society.

Before closing this chapter it is necessary to refer to a few minor functions of government, which also have for their object the selection of the constituent elements of society.

Naturalisation of Aliens.

Failure of Imperial Government to define conditions of British citizenship.

Closely associated with the duty of regulating the entrance of aliens into the country is that of regulating their formal admission to the rights of citizenship. This duty has everywhere been left by the Imperial Parliament to the discretion of the colonial governments, and the result is that the law of naturalisation throughout the empire is in a

Discrepant laws of South African colonies.

state of chaos. In the self-governing colonies of South Africa the law differs on several points of importance, especially as regards the period of residence required. The law of the Cape Colony requires the alien to be resident within its area at the time of his application, and to declare the period during which he has resided there. The intention evidently is that the government should take into account the period of residence before granting citizenship. In Natal, however, the alien must reside for two years in the colony before he can acquire the status of a citizen, and the privilege is restricted to persons of European parentage or descent. In the Transvaal and the Orange River Colony an alien must have resided for a term of not less than five years within the ten preceding his application; or alternatively he must have resided in the course of the last decade for five years in some part of His Majesty's dominions, and have spent the last year in the colony where he seeks naturalisation. The alien who becomes a British subject in the United Kingdom can claim citizenship throughout the Empire, but owing to the diversity of the colonial laws an alien obtaining naturalisation in a colony is a British subject in that colony and nowhere else. This has led to anomalous results. Many residents in the South African Republic, naturalised in the Cape Colony and long accustomed to regard themselves as British subjects, found after the annexation that they were still aliens in the Transvaal

and all other parts of the Empire, except the Cape Colony. More than three years ago the attorneys-general of the four principal colonies and Southern Rhodesia expressed themselves upon the subject as follows:—

> This is of course a matter which only the Imperial Parliament could deal with, but we do think that, as far as South Africa is concerned, there should be no difficulty in having uniform legislation on this subject; so that when an alien is naturalised as a British subject in any one part of South Africa he should have the rights of a British subject in any other part to which he may remove . . . We think the governments of the other colonies in South Africa should take steps to introduce similar legislation in their colonies. When once the legislation on the subject is made uniform, the difficulties we have referred to in connection with this subject, would be removed.

The change was made in the Orange River Colony, which was under the same Governor as the Transvaal, and here the matter ended. This is one more example of the failure of all such attempts at evolving order out of chaos in law and administration, while the disunion of which it is the natural result remains untouched.

Census.

Necessity of gauging the growth of population.

The State having set itself to control the composition of society, requires information regarding its numbers and condition. Such information is of special importance in a new country, where the elements of the future population are still unsettled and the relative growth of the white and coloured races has to be watched. This is the object of a census.

The development of one population can best be understood by comparison with others, and therefore a census is valuable in so far as its returns are comparable with those of other countries. For this reason the enumeration should take place at about the same time in each country. By general agreement a census is taken in the United Kingdom and most of its dependencies at the beginning of each decade, in 1891, 1901, and so on.

Absence of uniformity in South African census of 1904.

The war prevented a census being taken in South Africa in 1901, and by common arrangement between all the governments south of the Zambesi it was taken in 1904. A preliminary conference was held at Pretoria between their representatives, in the hope of securing that the enumeration should everywhere proceed on uniform lines; but its pious resolutions were attended by the usual fate, and as a matter of fact, the various census reports are not so framed as to facilitate the comparison of their results. A little examination of the reports themselves shows that their authors had merely discussed together rather than agreed upon, certain general propositions, and had otherwise framed and executed their plans in complete independence of one another. The different classification of races, for instance, makes it impossible to obtain an accurate enumeration of a particular race throughout South Africa. In Natal we find the races classified as (1) Europeans or whites, (2) Indians and Asiatics, (3) mixed and others, (4) natives in service

(5) natives in native areas. In the Cape we find (1) Europeans or whites, (2) Malays, (3) Hottentots, (4) Fingoes, (5) Kaffirs, (6) Bechuanas, (7) mixed and others. Both Indians and Chinese fall under different headings in these two classifications. If the census of British South Africa were taken by one administration on one plan and its results embodied in a single report, the development of the social conditions of the country would be readily apparent. As it is, such all-important information is either unobtainable or can only be found by a laborious comparison of reports and tables differing from one another in substance as well as in form. To the gain in the value of the results should be added the very material economy which would ensue if the census for all British South Africa were taken by a single office. As Statement No. VIII. shows, the cost of the census of 1904 reached the startling total of £150,000. It is certain that a large proportion of this would be saved by having one census instead of many. While one volume would be far more valuable than seven, the printing alone would not cost one quarter as much.

Extravagance of existing methods.

Statement No. VIII.

Vital Statistics.

The registration of births, deaths and marriages is a cognate function. If properly carried out the record of births and deaths enables the decennial census to be corrected annually, and the addition of immigrants to the population to be periodically deduced.

Registration of births, deaths and marriages should enable census to be checked.

The registrars of vital statistics act under statutory powers; but as the law in each colony differs there is nothing to secure that the returns are made with uniform accuracy or in a shape which admits of correct comparison. The statistical departments of each government collect different facts with differing degrees of exactitude. If a central government were established there is no doubt that it would assume the direction of all such operations.

NOTE.—*When this chapter was actually in print, there was brought to the notice of the authors a paper on the negro in America, written for the information of a club formed for discussing social and political problems, by Mr. W. L. Honnold, a mining engineer by profession and an American by nationality. The longer experience of the United States has a bearing on the future composition of society in South Africa, the importance of which it is difficult to overrate. The authors have therefore obtained Mr. Honnold's kind permission to append his paper to this chapter. It appears as Statement No. IX.*

CHAPTER VII.

The Improvement of Society.

CHAP. VII.

Subject of the chapter.

When society has been constituted and secured against disruption, and when the process of its composition has been determined, the most important duty which its government can undertake is that of conserving it in the best possible condition. The most obvious enemies of men's wellbeing are disease, poverty, vice, and the ignorance which is their common cause. Our purpose in the present chapter is to discuss the means adopted by the different governments in South Africa to combat each of these evils.

Analysis of the functions of public health.

(1) Preventive measures

For the protection of public health, it is usual for the State to undertake, in the first place, certain preventive measures. These commonly are expressed in laws framed (*a*) to prevent the introduction of infectious and contagious disease from without, whether carried by human beings or animals or through the medium of imported articles, and to arrest its spread from one part of the country to another; (*b*) to enforce certain standards of cleanliness, to prescribe the manner in which dwellings are to be constructed, to provide for a pure and sufficient supply of water and the disposal of waste products, and to make

provision for the burial of the dead; (*c*) to prevent industries from being conducted in such a way as to injure the health of those engaged in them; (*d*) to forbid the adulteration of food-stuffs and the sale of food-stuffs unfit for human consumption, to control the sale of poisons and drugs, and to forbid the use of tobacco by children.

(2) Curative measures.

But prophylactic measures by themselves can never be perfect, and the next business of the State is to provide the means of dealing with the disease that manages to elude them. For this purpose the government endeavours to provide a well qualified agency for the treatment of sickness. This it does by granting charters empowering certain associations to certify the fitness of doctors, midwives, nurses, dentists and chemists, and by forbidding uncertificated persons to practise any of these professions. Secondly it makes medical provision for poor patients, by appointing public doctors in every district. They attend also to the health of prisoners, and perform the medical work required by government generally. Thirdly, the State either provides or subsidises hospitals for ordinary sickness. It also provides public hospitals for infectious or contagious disease, and for the cure of inebriates, and also asylums for chronic invalids, for lepers, and for the insane.

(3) Research into causes of disease.

Most governments also maintain laboratories for scientific research and for the manufacture of vaccine and prophylactic and curative sera of all kinds. The object of these

is partly one of prevention and partly one of cure.

Health laws mainly administered through medium of local authorities.

For reasons which will appear later when we discuss municipal government, the administration of the public health law is generally delegated as far as possible to local authorities, rural as well as urban, where these exist. As a matter of fact there are no rural authorities in South Africa except in the Cape Colony, which is therefore the only colony which has committed the sanitation of country districts to local bodies. But municipal government in some form or other has now been established in most of the principal towns in all the colonies; and all municipalities assume responsibility for their sanitary administration.

Health duties proper to national government.

At the same time we must recognise that there are certain duties connected with public health which cannot be entrusted to local authorities; either because the sphere of action is too wide, or for other reasons. Now in their case it will generally be found that the reasons which tell against complete localisation tell also against the imperfect localisation which now results from disunion; that is to say, the duties in question could be performed more cheaply and efficiently than at present if they were undertaken by a central government acting for the whole country. Clearly the duty of excluding disease from oversea ought as a matter of convenience and economy to be combined with the control of immigration and customs at the ports, which

would certainly rest in the hands of the central government. The strong universal action of a national authority would also be needed if a dangerous epidemic like plague had gained a footing and threatened to infect all parts of the country. Again (just as was suggested in the case of lawyers and surveyors) it would be a great advantage to the public as well as to the professions if doctors, midwives, nurses, dentists, and chemists were examined and certificated by one authority for all South Africa. Hospitals for incurable patients and asylums for lunatics and lepers would be managed better and more cheaply by one government than by several. Indigent patients and lunatics often move from one colony to another without acquiring a domicile in any of them; and in such cases it is impossible to say which government ought to accept the cost of maintenance, and volumes of correspondence are wasted in endeavouring to settle such matters. The cost of lunatic asylums, like that of prisons, cannot be avoided; because the law compels the State to house certified lunatics whose friends cannot afford to maintain them in private. It is a serious and increasing charge which calls for careful supervision. Much money would be saved and it would be better for the health of the patients if such new asylums as are required were built near the coast. Again in dealing with persons chronically sick and still more with lunatics and lepers, it is proper as far as possible to separate the sexes and

races of patients suffering from different forms and degrees of disease. This matter is of special importance in South Africa, where Europeans, natives, half-breeds and Asiatics have all to be treated. It is evident that one central government would be able to carry the process of classification much further than provincial governments in dealing only with the cases which come from their own areas. The problem of leprosy is peculiarly instructive. In this case little can be done for the unfortunate patients themselves, and the main object of segregation is to save the rest of the community from infection. At present the Cape and the Transvaal governments maintain asylums, and Natal maintains a kind of leper location. The Orange River Colony, which has hitherto sent its leper patients to the Cape asylum, now purposes to establish one of its own. But only the Cape Colony makes any serious attempt to search out and to deal with every case or suspected case in the country. The other self-governing colonies content themselves with isolating such patients as happen to come to their notice; and the rest of South Africa does little or nothing to cope with the mischief at all. If the Cape Colony were able to eradicate leprosy from its population, it would suffer the disappointment of seeing them soon re-infected from Basutoland, Bechuanaland or Natal. If the taint is ever to be banished from South Africa and its return prevented, the universal and continuous

action of a national government is absolutely necessary.

Research a national interest.

The governments of the Cape Colony, Natal and the Transvaal all maintain chemical and bacteriological laboratories; but nearly all the discoveries they make are of common utility to the whole country and ought to be paid for accordingly. At present it may happen that investigations into the efficacy of disinfectants, or the search for a serum for the cure of the virulent pneumonia which prevails, are being made entirely at the expense of one colony, while their results are available to another, which spends little or nothing at all on research. But the existing dislocation besides producing injustice produces positive waste. *The money now spent on research by various governments could be applied to far better purpose in the hands of one central administration, which could direct the energies of the various enquirers so as to prevent overlapping. As matters stand, investigations conducted in two colonies may cover the same ground. Similarly vaccine and the various curative or preventive sera could be manufactured more cheaply in one than in several establishments. Exactly the same difficulty has presented itself and has been surmounted in India, where the central government has found itself compelled, in order to save waste of power and money, to assume a large measure of control over the provincial laboratories.

* In the Transvaal Medical Journal, February, 1908, Dr. Maynard shows the waste of life in South Africa which results from the failure of South African governments to investigate the causes of human disease peculiarly virulent in this country.

Methods of public relief.

Beyond certain provisions for the benefit of orphans and destitute children, South Africa has no poor law, and no system of State relief. Each government sets aside a small sum for poor relief which it dispenses as occasion offers, through the agency of district magistrates, or benevolent societies, or special committees.

The problem of the poor whites and land settlement.

We saw in the last chapter how the restrictions of caste, which impede Europeans from accepting rough labour at the wage which represents its market value, are rapidly operating to keep white men outside the industrial system altogether. The result is that South Africa is face to face with a problem of indigence of a peculiar kind, which she shares with a few other countries, like the southern states of the American republic, where white communities have endeavoured to found themselves on the basis of a coloured working class. This explains the extraordinary paradox presented by certain schemes of land settlement devised in the interests of the poorer whites. Governments in various parts of South Africa have spent and are still spending large sums of money, with small result, in trying to settle on the land, in a new and empty country, a class of men who were actually born to rural conditions. It is impossible to imagine the governments of either Canada or Australia saddled with such a class of helpless dependents. The most hopeful instance of this type

of land settlement is the one conducted by the Dutch Reformed Church, with the aid of a public subvention, at Kakamas in the Cape Colony, where families of poor whites have been placed on irrigated land, in the hope that the agencies of Church and State together may teach them by artificial exercise those habits of work which cannot develop naturally in a country which looks on toil as the stigma of a lower race. Similar schemes may be seen in operation under the control of government at Potchefstroom and Heidelberg in the Transvaal. At Middelburg, in the Transvaal, another settlement is conducted by the church, although the government provides the whole of the funds. Until recently these forced settlement projects were the only means by which governments attempted to solve the problems of white indigence: but with the past year or two endeavour has also been made to induce poor whites to accept rough labour on railway, municipal and mining works. How serious the difficulty is every South African is aware. This is not the place to endeavour to foreshadow its solution. We have already said enough in the last chapter to show that only a strong national administration can deal with a problem, which has its roots in a system pervading every part of the country and every department of its social life.

The savings banks.

A valuable palliation of poverty is the encouragement of thrift. All the South African governments endeavour to do this

by establishing savings banks for the benefit of those whose means are too small to admit of their opening accounts at the ordinary commercial banks. Through the machinery of the post office and by the use of its general credit, the State can administer these banks with a degree of economy which no private corporation could hope to attain. We propose to show in a later chapter that the post office systems should themselves be centralised, and if this happens the amalgamation of the attendant savings banks would follow as a matter of course. Tables showing the financial position of each of the four banks will be found in Statement No. X.

Statement No. X.

Prevention of Vice.

Leaving the question of poverty, we may next turn to the efforts made by the State for the prevention of vice. Most of the laws framed with this object are administered by the ordinary agencies of the magistrates and police. The only exceptions are the laws relating to the sale of liquor, which require, for their administration, a special machinery of their own. In all the colonies the grant of licences to liquor dealers is entrusted to special courts, presided over by the resident magistrate. In the coast colonies these courts are partly elective. In the inland colonies they are wholly appointed by government, in order to free them from the influence of the local trade. In the coast colonies and the Transvaal, the principle of local op-

The liquor laws.

tion is recognised, but not in the Orange River Colony. In the Cape Colony no licences are allowed in native locations or in areas proclaimed by the Governor. There are special licensing laws in the native territories, and no native or Asiatic may purchase liquor without a permit signed by the magistrate. In Natal, licences may only be granted in locations by written consent of the Secretary for Native Affairs, and the sale of liquor to Asiatics and natives is absolutely prohibited. In the inland colonies the law in regard to locations is similar to that in the Cape Colony, while the sale of liquor to or possession of liquor by all coloured persons as well as natives is prohibited.

Interest of a central government therein.

The large recognition accorded to the principle of local option in itself suggests that certain parts of the liquor administration may well be left to local control. But its wider problems certainly should not. The responsibility of a national government for customs, excise and the native question, which would necessarily devolve on a national government, would oblige it to retain an ultimate control over liquor legislation.

Education.

Reasons for State interest in education.

The most important and far-reaching of all agencies for the improvement of society is education. In primitive States or in those where the functions of government are in the hands of comparatively few persons, wide

differences of civilisation or knowledge between localities and individuals are of small account. The development of industrial and political life, however, increases the interdependence of the members of a community. The operations of society become less like those of a horde of savages, and more like those of a highly-trained army, which depend on each man's capacity to fill intelligently the part assigned to him. The more highly developed the State the higher is the standard of knowledge or intelligence required of each citizen if he is to play his part either as a political or as a productive force. For this purpose all modern States have practically arrived at a common minimum standard. This includes the arts of reading, writing and arithmetic, which are necessary to the humblest purposes of civilised life, as well as being keys to the knowledge which those must master who aspire to play a higher part.

Primary education.

Primary education, which usually engages the attention of a child from the age of six to thirteen or fourteen, may be taken as covering this common ground-work of knowledge. It comprises such training as will equip him for the simpler occupations of life, and at the same time gives him access to the more advanced attainments which he may have the capacity or opportunity to reach. Such further knowledge is provided by the higher branches of the educational system.

Secondary education.

By secondary education is meant the education which is higher than primary education, and is not given at a university. Practically it is that which a boy or girl may receive between the age of thirteen or fourteen and the age of eighteen.

University education.

The university provides the crowning stage of the education which the individual can obtain in the form of regular instruction at the hands of others. In its completest form the university is a community for the pursuit of knowledge in all its aspects. A number of students assembled, not merely to acquire, but to practise and to advance the arts and sciences into which the whole field of knowledge is divided, are best able to see how they are related and where they unite. In giving an opportunity for such studies, a university is discharging its true functions; and it represents the last stage to which society can carry its efforts to train the faculties of the rising generation to their highest point, and to equip them for the pursuit of knowledge for its own sake. To prescribe courses of study, to examine students, and to mark their attainments by granting degrees are merely the secondary duties of a university.

How governments promote education.

All modern governments are so far sensible of the importance of education to the well-being of their people that they systematically endeavour to further it in various ways. They may do so by making it compulsory within certain limits, by subsidising private

persons to establish schools, colleges and universities on approved lines, by establishing such institutions themselves, by training teachers and granting certificates to those qualified to teach in public schools, and by directing the content and form of the instruction given in them. In some cases government discharges these duties directly through its own officers. In others the actual administration is left to local bodies in the shape of boards and committees. The cost of education is defrayed from all or any of four sources—private benefactions, scholars' fees, and local or national taxation. In all cases the government is assisted by a staff of inspectors, whose duty it is to secure that the money provided from public sources is spent on the lines approved by the government, and to act as a link between the central authority, the local bodies and the schools.

Educational institutions in S.A. described. Primary schools.

We may now briefly review the institutions through the medium of which primary, secondary and university education is administered in South Africa. In this, as in other countries, where the population is widely scattered, primary education is costly and difficult to organise; because the radius of utility of each school is generally measured by the distance of the journey which children can traverse twice a day either on foot or with such transport as can be given them. In many country places the school is organised in the most central house available, government contributing to the salary of the teacher. Wher-

ever 25 or 30 children can be assembled, a proper school building, with quarters for the teachers, and sometimes for the pupils, is supposed to be provided. Not seldom scholars are lodged at neighbouring houses. Country schools do not as a rule aim at imparting instruction in anything beyond the three rudiments of learning; but in primary schools in towns an attempt is usually made to lay the foundations of the other knowledge which is taught in secondary schools.

Secondary schools.

In secondary or high schools, which are always situated in towns of some size, children who have passed through the primary stage can pursue their education to the point indicated by the matriculation examination of the Cape University, which we will shortly describe, and to an equally advanced point in subjects other than those required for matriculation.

University colleges.

Lastly, there are colleges which prepare young men to graduate at the university. Generally speaking, these colleges have begun life as secondary schools, and a few of them, though they have developed into institutions for the training of young men, continue to educate children in the lower classes. In some other instances they have retained, in the main, the character of secondary schools, but have developed a class at the top which aims at training older pupils for the higher university examinations. The evils of combining a school and a college system in a single institution are obvious. The theory of

university education is that a student has passed the stage of boyhood and can be treated almost as a man. In a composite institution he remains as an overgrown school boy, associating with boys and subject to boys' discipline. Moreover, if the institution is really a school and not a college, the staff and equipment needed for the higher teaching is often wanting. The instruction which such an institution gives is not really university education at all, but a make-shift. These defects are due to the scattered character of the population, and to financial needs which have driven existing institutions to attempt more than they can properly perform. But another cause lies in the conditions upon which matriculation has been permitted. For some time past there has been no age limit for matriculation, and smart boys can pass the examination at the early age of fifteen, and expect thereafter to be provided with college classes. All these causes have helped to obscure the clear line which ought to be drawn between high school and university education. These remarks have less application in the Cape Colony than elsewhere.

Technical education.

Turning now to technical education, we find in existence industrial schools for the training of craftsmen, and agricultural colleges where a practical and scientific knowledge of agriculture may be gained. These latter institutions are invariably conducted by the agricultural departments. There are also the special schools for destitute, defective

and deaf and dumb children, which aim at imparting a technical training in addition to elementary education.

Training of teachers.

Finally, most governments recognise that the surest way of improving education is to improve the teachers; and for this purpose they maintain normal colleges which give instruction in the art and science of education and open a useful career to some hundreds of colonial-born youths and women.

Native education.

So far we have spoken only of European education. The education of natives has been left to the agency of missions. They are assisted by government grants, and inspected exactly like the schools for whites. For the most part this instruction does not go beyond the primary stage. Some higher education is provided by the training schools for teachers, of which there are ten in the Cape Colony, all of them subsidised.

System of government control in self-governing colonies.

The relations of the different colonial governments to these institutions may now be considered. In each of the four self-governing colonies the education department is usually controlled by the colonial secretary, as minister for the interior or for home affairs. His permanent lieutenant, entitled the director or superintendent of education, is assisted in his duties by an administrative staff resident at the seat of government, and by a staff of inspectors each of whom is in charge of a separate district. In Natal the education department deals directly with the person or committee responsible for each

private aided school, and administers the government schools through its own officers. In other colonies this work is done by local boards elected in each district, subject to the supervision of the education department.

Natal may be dealt with first as offering the simplest case. In the year 1906 there were some 514 schools supported by public funds. Of these 469 (including 163 farm schools) were schools built and administered from private funds, supplemented by contributions from government, and 45, being nearly all primary schools, were established and maintained by government itself. Education is not compulsory, and fees are charged in all schools, whatever their status. The private schools are aided by a capitation grant, which is subject to certain conditions respecting the fitness of buildings and equipment, the qualifications of the teachers, the course of studies and results attained. It is the duty of the inspectors to visit the schools, and to see that the conditions prescribed are complied with. In the case of the government's own schools the inspector is an administrative officer; he supervises their establishment and organisation, and acts as the link between the school staffs and the central office. In the aided schools government has no voice in the selection of individual teachers. English is the medium of instruction throughout the colony. Secondary education is provided partly by private schools and partly by government colleges and high

Natal.

schools in Maritzburg and Durban. Maritzburg College for boys has established collegiate classes at the top of the school. An agricultural college is maintained on the model farm at Cedara.

The Cape Colony.

The Cape Colony is divided into some 122 school districts, in which 78,044 white children and 95,909 coloured children are receiving education. In each district all the administrative work in connection with the white children, as distinguished from the work of inspection, is undertaken by a board, the majority of whose members are elected by the ratepayers for each district, the rest being appointed by government. These boards are in turn assisted by advisory committees, who represent the parents of the children attending the school assigned to their supervision. It is the business of the board to administer the grants given on the £ for £ principle and to establish and to administer the public schools. The board may, subject to the approval of the education department, compel the attendance of European children within the district who live within three miles of a school, and fees are chargeable in all schools. Deficits are met by a contribution from the local authority raised by rates. The government inspector's duty is to oversee the whole administration in his district, and to keep the central office informed as to the work of the boards. He also acts as the friendly adviser of the local boards and committees, and he is responsible to the government for

the vitality and efficiency of the system. The teachers are the servants of the boards, and their appointment and dismissal is initiated by the school committee, who forward their recommendation to the board. The board make their comments upon such proposals and forward them with a recommendation for the approval of the department, which declines to pay any grant in aid of a teacher's salary appointed without its approval. A teacher cannot be dismissed except by the board with the approval of the department. The medium of instruction is not definitely prescribed. High schools as well as primary schools are under the control of the boards. The university colleges, on the other hand, are controlled under their own constitutions, and are subsidised, like the schools, by government grants. These are the South African College, Cape Town, the Diocesan College, Rondebosch, the Victoria College, Stellenbosch, the Rhodes University College, Grahamstown, and the Huguenot College, Wellington; and among these five a grant of about £21,000 is distributed. With the partial exception of Rondebosch, all of them that ever had school sections have practically dropped them. Pupils from many parts of South Africa obtain their education at these colleges. Several industrial schools, of which that at Uitenhage is the most important, are subsidised by government, and an agricultural college is maintained by the agricultural department at Elsenberg. Several institutions are

also supported by the education department for the training of teachers.

The Orange River Colony and Transvaal.

The educational systems of the Orange River Colony and the Transvaal are modelled on the same outlines, with certain important variations. Members of the school boards, other than those appointed by the government, are elected in the Orange River Colony by the male inhabitants of each magisterial district, in the Transvaal by the parliamentary voters. The boards control the expenditure on certain specified items only. In both colonies education is free, but in the Orange River Colony one-sixth of the cost is provided by a poll-tax on every male adult. More can be raised in the form of a graduated income tax on the residents of the district, if this course is approved as the result of a referendum. In the Transvaal there is no kind of local contribution. In both colonies the teachers are the servants of the government. In the Orange River Colony Dutch and English are on an equal footing both as mediums and as subjects of instruction, with certain negligible exemptions. In the Transvaal the medium of instruction is the native language of the pupil, but English is gradually introduced up to and including the third standard, beyond which the medium is English, though adequate provision must be made for instruction in the Dutch language. In the Transvaal high schools have hitherto been provided, either wholly by government with no contributions beyond the fees of the pupils, or else by private organisations receiving no government assistance. Those

receiving public funds are now supervised by the school boards. The Transvaal University College, which is practically the only collegiate institution in the colony, is established on lines similar to the independent colleges in the Cape Colony, and, like them, is subsidised by government. In the Orange River Colony the secondary schools are government institutions. Grey College School is a secondary school administered by a special board appointed by the government. Grey University College is a separate institution which admits matriculated students only to its regular courses. There are orphanages at Potchefchefstroom and Langlaagte in the Transvaal, which are likewise technical school subsidised by government, and at Bloemfontein a hostel is maintained by the education department for boys who are apprenticed to trades under its supervision. Instruction is likewise imparted to them there on branches of study which bear on their work. The Transvaal is establishing an agricultural college on the model farm at Potchefstroom. Normal colleges for the training of teachers are maintained by both colonies.

Diversity of the four systems.

The four educational systems are embodied with considerable detail in statutes and regulations. The foregoing summary shows that the few principles which they have in common are of a very general nature, and even where the meaning of the statutes is the same, it is expressed in very different terms.

The Cape University.

The university of the Cape of Good Hope is an institution empowered to prescribe courses of study, to test students by examina-

tion, and to declare and record their standard of attainment by conferring degrees. It is governed by a council of thirty-eight, of whom fifteen are appointed by the government of the Cape Colony, three by the Transvaal, three by Natal, two by the Orange River Colony, and fifteen by convocation of the graduates of the university. The government grant amounts to over four thousand pounds a year, to which must be added contributions of four hundred pounds from Natal, three hundred from the Transvaal, and two hundred from the Orange River Colony. The university exercises a great influence on the course of studies followed in the schools and colleges which prepare students for its examinations. It has also certain functions in regard to the examinations required for admission to some of the professions, the surveyors' examination, the law examination, and the like. It derives its power from Cape statutes, and is incorporated under the name of the University of the Cape of Good Hope. Within the last year or two at least one of the neighbouring colonies has seriously entertained the idea of establishing a second university for itself. But the danger of creating two inferior universities instead of one good one was recognised in time; and an inter-colonial conference to discuss the subject was convened in Cape Town in February, 1908, under the auspices of the Cape University. At this conference the four self-governing colonies and Southern Rhodesia were represented. The delegates resolved that

one South African university, with constituent and affiliated colleges, ought to be established, and that the university of the Cape of Good Hope should be merged in the wider institution. They then proceeded to formulate a constitution providing for the government of the university, for the affiliation of colleges to it, and also for its revenues and powers.

Difficulties of centralising administration.

Such, in brief outline, are the systems of primary, secondary and university education as they exist to-day in the four self-governing colonies. We will now consider the probable bearing upon them of the union of the colonies under one supreme government. In many of their leading features the systems of primary education differ radically, and it would be difficult indeed for a single national government to take them over and to administer them as they stand. Their financial provisions alone are incompatible. If the control of the existing systems were transferred to a central government the Transvaal parent would obtain primary education for his child at the sole cost of the taxpayer, while in neighbouring colonies the parents or taxpayers would all be contributing in varying degrees. On the other hand, the establishment of one uniform system would probably be a task which no central government would feel inclined to attempt without some years of experience and study. Any system of national education involves a mass of administrative detail, and also requires a nice adjust-

ment of those details to the conditions and prejudices of each locality. All the colonies but Natal have already delegated much of this detail to local authorities. It is safe to say that in a country of any size a system of primary education administered entirely from the centre would become too rigid; and the future educational system of united South Africa will probably do well to leave the local communities a wide latitude in detail.

Aspects of education demanding national control.

If, on the other hand, the principles laid down in the opening pages of this section are correct, it follows that no one locality should be suffered to fall far behind the others in the standard of education it imposes, and that some authority should be in a position to see that this does not happen. Few civilised countries attain the same high standard of education as the United States of America. Few, on the other hand, fall to so low a level as some of the constituent States such as North Carolina. But owing to the terms of the constitution the federal government can do nothing to correct this inequality, beyond collecting and publishing information to show that it exists.

Shadwell's Industrial Efficiency, Vol. II., p. 385.

"With indefiniteness of aim and lack of central guidance or control, it is not surprising to find enormous discrepancies in the methods. Each State makes its own laws and regulations, and though some are sufficiently alike that they can be grouped, there is no uniformity, even in primary and essential points."

In Canada also the endeavours of the national government to introduce military train-

ing into the primary schools have been seriously hampered by the fact that their administration is entirely in the hands of the provincial governments. These striking examples suggest that the English system presents the sounder model. Under it the schools are administered by the county councils and county boroughs, but the central government provides part of the cost and reserves the right to prescribe the curriculum, to insist on certain standards of efficiency, and to control the system as a whole.

Need for stricter classification.

In the sphere of higher education, as we have already noticed, the distinction between schools providing secondary education for boys who have finished their primary course, and university colleges where young men are preparing themselves for degrees, is not always drawn with sufficient clearness. In other words, classification of schools cannot be carried as far as is desirable, a result certain to follow while each colony is attempting to equip itself on a national scale. So long as these conditions obtain, inefficiency and waste go hand in hand, a truth set forth with unmistakable clearness in the closing resolution of the conference of February last.

"This conference is of opinion that the number of independent institutions preparing students for university degrees in South Africa is greater than the need requires, and that the organisation of such work is in consequence difficult and uneconomical; and this conference recommends that the co-operation or union of the present university colleges be encouraged and the multiplication of such colleges in the future be discouraged."

Reasons for centralisation in training of teachers.

The Cape government alone is spending £37,000 a year on the training of teachers, an object essential to any great system of public education and always costly. But the teachers trained by one government are only bound to it for two years; and it has no guarantee that after that period the teacher may not be enticed away by one of its neighbours, which chooses to spend less on training and more on salaries. The experience of England shows that this is no imaginary danger. The British government, anxious to unburden the central treasury, has assigned the duty of training teachers to the county councils; and these bodies are now finding it impossible to secure to themselves the benefit of the services of the teachers for whose training they have paid.

Need for a teaching and residential university.

In one respect the existing scheme of South African education is conspicuously lacking. There is no university in the full meaning of the word. It is true that the Cape university prescribes courses of study, tests students by examination and declares and records their standard of efficiency by conferring degrees, and that all the colonies make use of its services. But it is not a community of learning where enquirers, teachers and students are gathered together for the pursuit of knowledge, such as may be seen in Great Britain, Germany, and the United States. Centres of education such as Grahamstown or Stellenbosch would come nearer to university life if the pupils were older, and if more attention was paid to original research.

Legal difficulty of giving effect to conference resolutions.

The fact that the recent conference has formulated a scheme for a national university is so much gain, if only because the principle of concentration is affirmed in its resolutions. But those resolutions do not indicate, far less discuss, the legal steps necessary to give effect to them. Although the degrees of the Cape university are recognised by letters patent, its legal powers, as well as its name, are derived from statutes of the Cape legislature. How then, under present political conditions, can the university of the Cape of Good Hope be transformed into the university of South Africa? The legislatures of neighbouring colonies may recognise its degrees and may confer certain privileges on the holders. They may authorise contributions to its funds and the appointment of delegates to its governing body. All this indeed they have done in the past, in virtue of the Cape Colony Act 6 of 1886, which authorised the Governor to appoint to the university council representatives of such colonies or states as are willing to make an adequate contribution to its chest. But none of these things alter the provincial character of the present examining body in Cape Town. Pending the establishment of a national parliament the only possible course is for the Cape legislature to pass an act providing for the establishment of the university of South Africa in the place of the university of the Cape of Good Hope, and suspending the operation of the scheme until such time as the Governor was satisfied that all the

other colonies concerned agreed to provide the necessary funds. But even so the university of South Africa would depend for its legal existence upon a statute of one colony only. This is no mere defect of form. The governments of the neighbouring colonies cannot bind their successors in perpetuity to vote the necessary funds on their annual estimates, and every time the agreements expire or come up for revision the whole question of partnership will be re-opened. National institution though it be, the university will depend on the most unstable of all foundations, the capacity of five independent parliaments to act and legislate as though they were one. Sooner or later its promoters will find that unity of national thought or action is no more to be gathered from political division than grapes of thorns or figs of thistles.

These difficulties removable only by national union.

The conference rendered another good service by declaring that research is one of the most important functions of a university, and thereby recognising that a true university is something more than a board which ascertains the proficiency of students in certain studies prescribed in its syllabus. But it is greatly to be feared that those who aspire to erect a true university upon existing foundations will find their strength wasted and their labours multiplied at every turn so long as they have to deal with five communities and five governments. With the establishment of a national legislature and purse the realisation of the true ideal would no longer be an

idle dream. No doubt there are great practical difficulties. The existing colleges may be organised in one system of study and examination; but separated as they are by hundreds of miles, they cannot be united by the bonds of mutual intercourse and common intellectual tradition. But it is not inconceivable that they might be adapted to serve the growing needs of secondary education, and that with the new enthusiasm that attends great national developments, there might come into being—preferably in the Cape peninsula—a true university, a genuine community of learning and research. Nor is it to be forgotten that as soon as a national government is established it will find itself in possession of a site, well suited to this and to other of its public needs. In an earlier chapter we saw how Rhodes apprehended the dangers menacing the frontiers of South Africa, and by his rapid and resolute action secured for her half the dominions which her commonwealth is destined to embrace. The same eye, that looked to the vast and mysterious regions of the north, was not unmindful of the landscape beneath the citadel of precipice and crag that crowns her southern gate. Even while he was saving Rhodesia he rescued from the builders one great face of Table mountain, and bequeathed it to the country, which he had figured in his mind, but was never to see united as one. Here is a national inheritance, which the genius of an artist has conspired with nature and memory

to enrich. But whatever be the exact site chosen for a South African university, what surroundings can compare with those of the Cape of Good Hope for lifting the minds of future generations to a sense of that which is due from them to their country, and to the larger society of which it is a part? The peninsula with its bays and promontories is something more than the storied and beautiful porch of South Africa. Its summit is one of the high places of empire, a corner beacon of the world itself, for round its base the currents of two oceans and two hemispheres meet.

CHAPTER VIII.

Communications.

Means of communication in South Africa.

The means of communication upon which South Africa depends for the movement of persons and goods are shipping, harbours, railways and roads. To these must be added the postal services which undertake the forwarding of letters and small parcels through all these arteries, and the transmission of messages by overland wires and deep-sea cables.

Preponderant interest of government in communications leads in some cases to State control.

All practical business involves in some way or other the movement of persons, goods or messages from place to place. The administrative work of government, which in any civilised country is the largest single business, depends upon cheap and regular communications. The state, therefore, is often led to provide or acquire services of certain kinds. Another motive for government control of communications, is the desire to protect itself and its citizens against monopoly, but whether such control is possible will depend on the nature of each service. Government indeed nearly always shrinks from assuming the control of commercial enterprise, unless it can secure a monopoly for itself.

Sea-borne traffic not amenable to State control.

In the case of sea-borne traffic nature itself provides the track, and carriers have only to supply the vehicles. Ocean roads, moreover, cannot be closed in time of peace, for no government's jurisdiction extends beyond three miles from land. Nor in practice can a British colony close its harbours. No colonial government could impose differential harbour dues without violating the most-favoured-nation clauses of Imperial treaties. The rebate system, used by private firms to establish a monopoly, is scarcely one that the state could employ. It follows that a colonial government which tried to run its own shipping, would find itself exposed to world-wide competition. As a matter of fact, no government has made the attempt; they have all decided to rely for sea carriage on private undertakings, even though it may happen that the shipowners succeed in establishing a monopoly.

South African shipping communications described.

The sea trade between South Africa and the East or Australia is of minor importance, and it is enough to consider the trade with Europe and America. There are certain lines which touch at Cape Town on their way to Australia; but the steamship traffic with Europe is practically divided between the Union-Castle line, the Clan line, the Ellerman-Harrison line, the Houston line, the Bucknall line, the Rennie and King line, and the Deutsche Ost Afrika line. The managers of all these companies meet in conference and fix the freights to be charged by all of them.

A certain percentage of these charges is refunded to the shipper within a period of twelve months, if he has not in the meantime shipped goods to South Africa by any steamship not included in the compact. By this device, common throughout the whole shipping world, the conference attempts, and as a rule is able, to exclude all other steamship lines from competing in the South African carrying trade.

How far shipowners are dependent on Governments of South Africa.

The shipowners are dependent on the action of South African governments in two ways. In the first place coasts must be lighted, for the safety of navigation, and facilities must be provided for the landing and shipping of cargoes. Secondly, the governments themselves provide five per cent. of the cargoes of the sea-borne traffic to South Africa. In this estimate are not included the mails carried by the Union-Castle line, which, for an annual subsidy of £135,000, contracts to run one ship a week each way between Southampton and Table Bay in not more than sixteen and a half days.

Ports and effect of railway communication thereon.

The next links in the chain of communications are the ports, where traffic is transferred from ships to roads and railways, and *vice versa*. Before the days of railways each port was an emporium, where most imported goods were collected and stored for gradual distribution through the country. In these circumstances questions affecting the landing of goods mainly concerned the merchants at the ports to whom they were consigned. As

soon, however, as the ports are connected by railways with the interior, inland centres naturally begin to import goods directly from oversea. Each port then inclines to become a terminal station of the railway system, and a far wider public than that of the local emporium is interested in its proper administration. For this reason ports are often dealt with as part of the railway system. The principal harbours of British South Africa are Table Bay, Port Elizabeth, East London and Durban. A great portion, however, of the Transvaal and Rhodesian traffic enters by the foreign ports of Delagoa Bay and Beira respectively, both of which are in Portuguese territory. Table Bay, Port Elizabeth and East London are in the hands of boards composed of three nominees of the government, the mayors of the respective towns, a representative of the Chamber of Commerce in each town, and two members elected by the persons who use the port, voting in proportion to the amount of dues which they pay. The revenues of the boards consist of dues of various kinds collected from the shipowners, importers and other persons using the harbour; and the boards are responsible for ordinary working expenditure. But when it is a question of capital outlay, the government recognises its direct concern by providing the money from public loans. The debt-charges are, of course, met from the port revenues.* In Natal the State has gone further, and the

* In the course of the last session the Cape parliament has passed legislation bringing the ports under direct government control.

port of Durban is directly administered by the colonial government, with the assistance of an advisory board. The financial position of the Cape and Natal harbours is shewn in Statement No. XVIII.

Statement No. XVIII.

Communications overland differ from sea traffic in being far more amenable to government control. To begin with, they lie within the territorial jurisdiction of governments. In the second place, regular traffic requires roads constructed and maintained for the purpose; and as these must often traverse private property, the authority of the State is needed before they can be built. The governments, moreover, of extensive countries, have had to build roads in order to administer and develop their dominions before they would be worth constructing for purely commercial reasons. The State, therefore, provides roads as part of the general equipment of the country out of the public revenues, whether national or local; but having done so, it leaves private persons free to provide their own transport, because this is a comparatively simple matter, requiring no great expenditure of capital or power of organisation. Indeed, for the most part, the State relies on private enterprise for the road transport of its mails, goods and officers. In constructing and maintaining public roads, bridges and ponts, the State acts either directly or through the agency of municipal bodies and divisional councils.

Overland communications. Their intimate connection with Government.

Public provision of roads for unorganised private traffic.

So long as land transport travels by road there is little likelihood of a private monopoly in the track or vehicles. But for modern

Railways imply concentration of traffic on roads and vehicles both controlled by one authority.

needs animal transport over ordinary roads is too expensive and slow for long distances. In order to cheapen and to accelerate traffic, steam power—and what is even more essential, organisation—are brought into play. Passengers and goods are concentrated in heavy trains of carriages and trucks drawn at a high speed by mechanical power, over roads laid with steel rails. All this requires an elaborate organisation, which makes it necessary for track and vehicles to be owned, maintained and administered by a single management. Speaking generally, railway working expenses per ton per mile or other unit of work tend to fall as the amount of traffic handled by a single sytstem increases. It is this principle which has led to railway amalgamations in England, and also in America, where the process of concentration has been carried further still. Costs fall to their lowest limit when the whole railway traffic of a country is handled by a single management, except where the system is too great for any single brain to control.

Reasons for State ownership of railways in South Africa.

A railroad, like an ordinary road, requires a continuous way-leave over land, whether public or private, and must therefore be constructed with the authority of the State. But though government alone can enable a line to be built, it does not follow that it must build the line itself. Indeed, where its interests, military or otherwise, in transportation are comparatively small, its natural inclination is to leave the responsibility for organising the

intricate details of a railway system and for the great expenditure involved, to private corporations. We have pointed out that if the system of transport is to be organised as cheaply as possible, it must be placed in the hands of one management, except where the system is unusually large. But one private corporation vested with such powers would be more powerful than government itself. The State, therefore, has two alternatives. Either it may divide the traffic among different companies in order that competition may restrict their charges to a reasonable level, or it may face the responsibility of owning and working the system as one great public concern. Which of the two alternatives is chosen the circumstances of each case will determine. In countries like England and the United States, where the direct interest of the government in transportation is relatively small and where there is plenty of room for competition, railway transport is left in the hands of companies. In countries like Germany, where for military reasons government is supremely interested in railway transportation, the State is driven to own and work the railways for itself. In new countries like South Africa, railways are necessary to develop vast and thinly-peopled areas even before they would pay for the purposes of commerce. Private enterprise naturally hesitates to come forward, and in the few instances where it might be inclined to do so, it would be deterred by the prospect of competition, because the volume of traffic

available is too small to be shared between two lines. Private lines could only be constructed on a monopolist basis. But in a vast country, entirely devoid of waterways, it would be intolerable to have one private corporation controlling the entire system of communications. In these circumstances the government has itself undertaken the responsibility of building and administering the railways in South Africa. Whatever its demerits are, this course has the advantage that it prevents the holders of a private monopoly from exacting extortionate charges from the public and becoming too powerful a subject of the State. It also enables the whole of the traffic within the jurisdiction of the government to be handled by one system, and this, as we have shown, should help to cheapen transport.

Advantages of State ownership neutralised by disunion.

Where, however, one country is arbitrarily divided into a number of territories with different governments, it is apparent that some of the benefits of State management are lost. Divided ownership does not allow the maximum traffic to be dealt with by a single corporation, nor the cost of working to be brought to a minimum. Moreover, if the people of one territory depend on the railway of another, the government of the latter will be tempted, like a private company, to make unreasonable charges, so far as it is not restrained by competition or diplomacy. Under such conditions all the disadvantages inherent in the public management of com-

mercial undertakings like the railways are combined with many of those which result from private ownership.

How South African railways are controlled.

The map of South Africa shows that its railways are in this unhappy position. The great competitive zone for the occupation of which the coast railways are fighting is the mining area of the Rand. The main railway systems connecting the British ports with the interior are owned and controlled by the governments of the four principal colonies. In the Cape Colony their administration rests with the commissioner of public works, and in Natal with the minister for railways and harbours. The railways of the Transvaal and the Orange River Colony were placed after the war under the control of the Inter-colonial Council, described in Statement No. II. This body, which met once a year, delegated the management of its railways to a committee consisting of a chairman, the treasurer of the council, and seven other members. The inter-colonial Council and its railway committee have just expired, but the railways of the two colonies are to remain united, under a joint board of five members, three appointed by the Transvaal and two by the Orange River Colony. Statements are appended giving full details of the finances and organisation of all these railways.

Statements Nos. XI. and XII.

Rhodesian railways.

The interior of Southern Rhodesia is connected with the east coast by the Beira and Mashonaland railway. The rest of Rhodesia

is served by three main lines which meet at Bulawayo, one connecting with the Beira and Mashonaland railway at Salisbury, another with the Cape Government Railways at Vryburg, and a third running to Broken Hill mine in North-Western Rhodesia. All these lines are owned and worked by companies closely connected with the Chartered Company, which guarantees the interest on their debentures.

Postal services.

The same considerations which lead the State to interest itself in railways, apply even more strongly to postal services. All governments have a preponderating interest in the safe and punctual transmission of messages and small packets. The cheapness and efficiency which results from handling such traffic on the largest possible scale is so well recognised, that in nearly all countries posts are treated as a government monopoly. Rightly cautious in committing themselves to innovation, governments have usually begun by leaving the electric transmission of messages to private companies, but gradually they are being compelled to take over the wires in so far as they lie within their own frontiers. The fact that different governments usually control the ends of deep-sea cables is an obstacle to public ownership, which has, however, been overcome in the case of certain Channel and Pacific lines. The postal arrangements of the eleven different governments of South Africa are conducted by six separate organisations, one for the

Cape Colony, Bechuanaland Protectorate and Basutoland, a second for the Transvaal and Swaziland, a third for all Rhodesia, and three more for Natal, the Orange River Colony and Nyasaland respectively. The financial position and organisation of the post offices of the four self governing colonies is shown in Statements Nos. XIII. and XIV.

Statements Nos. XIII. and XIV.

We have now before us in outline an account of the various means of communication in South Africa, as well as of the relations of the colonial governments to them. The effect of disunion on those relations must now be examined. We will deal with the railways first of all. A railway manager has two considerations before his mind. One is to earn the largest possible revenue, and the other is to carry his traffic at the lowest possible cost. Each of these objects depends upon the other. The larger the volume of traffic handled, the lower will be the average cost of carriage. Low costs enable the manager to reduce his rates, and low rates mean an increased volume of traffic. The memoranda published under cover of the High Commissioner's despatch of January 7, 1907, and Mr. J. Conacher's report of 1908, have established the conclusion that flat rates are impossible, that is to say, rates cannot be fixed at so much a mile or a ton. As Mr. Conacher says :—

Effect of disunion.

Paper on railway rates appended to Selborne memoranda, page 13.

> The whole art of rate-making consists in the skilful adjustment of the charge for all descriptions of traffic, in such a manner that the railway authority, while requiring no unduly large remuneration for the carriage of higher class traffic, is placed in a position to

quote rates low enough to stimulate and create enterprises which otherwise would either languish or never come into existence, subject always to the duty of securing some contribution to profit from even the lowest rate which may be charged.

The manager, therefore, who wishes to work his railway most profitably must be at liberty to offer, on any route and for any distance and for any class of freight, whatever rates are best calculated to increase the volume of remunerative traffic. This intricate subject is fully explained in the documents referred to, and it is not necessary to enlarge on it here.

Injurious influence of political control on railway rates.

The directors of a railway company will leave their manager a very free hand in fixing rates, because they know that he will thereby earn the maximum profit for distribution among the shareholders. A government which seeks to manage railways successfully, ought to do the same; but because it is called upon by parliament to explain and to justify everything it does, it hesitates to act with any elasticity through fear of incurring the charge of favouritism. It thus inclines to fix rates on rigid principles, and rigid rates always mean high rates, because they fail to attract a great deal of traffic which a manager with a free hand would secure in order to reduce his working costs. The only remedy for this is for the State to delegate the administration of railways, like the administration of justice, to some authority beyond the scope of political interference. Even this may not be a complete remedy, so long as the final responsibility rests with the government.

Such a remedy is impracticable in South Africa at present, because railway administration is inseparably mixed up with politics. The coast governments are each fighting for their own ports and their own routes. They are also using the railway for political purposes, which have nothing to do with railways at all, such as granting bounties on their own products against those of other colonies and countries by means of specially reduced rates. The inland system of the Central South African railways is equally concerned to divert traffic to the routes which will give it the largest amount of revenue; but these do not lie through the coast colonies. As Mr. Conacher has shown, the Central South African railways have an enormous interest in guiding traffic to Delagoa Bay. The outcome of so many conflicting influences is that rates are fixed on no principle which encourages traffic or contributes to cheaper working. The rates scheduled are a compromise gradually established little by little with infinite trouble and negotiation. Any idea of basing the system on scientific principles calculated to provide South Africa with the cheapest possible scheme of transport has been lost sight of in the process. The existing structure has been piled up as occasion permitted, not built up on any deliberate plan, and if one part of it is disturbed the equilibrium of the whole is threatened. Attempts to alter the compromise in any respect might easily involve the country in a rate war. Mr.

Railway administration cannot be neutralised unless railways are united.

Conacher, indeed, goes so far as to hint that this fear of producing a general conflict actually prevents the construction of new lines which would lead to such a revision of rates as followed the opening of the line from Kimberley to Klerksdorp.

Taxation of one colony by another by means of rates.

Another defect of the present system is that each government, wherever it can, makes profits out of the taxpayers of other colonies, in order to relieve its own revenues, or to cheapen transport to its own citizens. Through traffic is run at a profit and local traffic at a loss. The result is seen in a perpetual state of dispute between the colonies, which can have no end so long as the different systems remain divided. Mr. Conacher remarks:—

Mr. Conacher's conclusions.

> I can come to no other conclusion than that under present conditions no settlement of a permanent character can be reached, and that any settlement that may now be found practicable would, while it lasted, have a tendency to delay further extensions of the railways not of a purely local character through fear of re-opening old questions that had been settled.

Inability of South African Governments to control shipping ring.

It is just this divergence of interests between the colonies that leaves the combination of shipowners practically masters of the situation so far as sea freights are concerned. Governments separated by hundreds of miles and dependent each on its own parliament for the endorsement of its acts, find it almost impossible to move in a solid body; but for half a dozen directors who can assemble in a city board room whenever they please, nothing is easier. Even when the governments have

assembled, experience shows how hard it is for them to attain unanimity and how easy it is for the shipping ring to destroy the harmony by offering one government concessions, which would enable traffic to be brought to the interior more cheaply by its ports and lines than by those of the rest. All this is to be seen from the minutes of the conference of the representatives of the various South African colonies which met in London in 1905. The directors' first duty is towards their shareholders, and if it suits their interest they may at any moment set the colonies of South Africa at odds. It is scarcely a year since the apple of discord was actually placed in the hands of Natal, and a war of rates was only averted by the self-restraint of her government when it abandoned the attractive but hazardous prize.

Waste involved in divided railway management.

The division of the through lines between separate managements presents occasion for waste in a number of directions. To begin with, it creates a class of business which is artificial and sterile, and which would not exist at all if the lines were controlled by one authority. As pointed out in the recent report on the organisation of the Central South African railways, the attention of managers is diverted, by the ceaseless burden of inter-colonial negotiations, from their proper task of organisation and reducing the cost of working. The process of apportioning the passenger and goods revenue amongst the various administrations costs at least £40,000 a year. In addition to this there are a variety

of cross accounts for the hire and repair of vehicles of one administration when moving on the system of another. If the railways were united, the whole of this business would simply disappear. More important still are the economies which could be realised in the cost of working. Apart from possible savings due to the concentration of traffic on those through lines which can be more economically worked than others, at least £25,000 a year would be saved on the principal routes from Johannesburg to the coast, if the changes of engines, dining cars and staff, which now take place on the border, were eliminated and the engine runs improved. The redistribution of the work among the different workshops under one system would mean such reductions in cost that many articles could be manufactured in South Africa which have now to be brought ready made from oversea. Far more money would thus be spent in wages in this country. There would also be a great saving on stores. It is not merely that stores are cheapened in proportion to the quantity in which they are ordered. The aggregate amount of stores stocked would be far smaller, since unification of the various systems would lead to standardization of equipment, and to reductions in the number of types not only of engines and other rolling stock, but of permanent way and other material. Every different type of truck, coach, engine or machine, means that a different type of spare parts must be stocked for the purpose

of repairs. A great multiplicity of types increases the aggregate number of spare parts which have to be kept, and also the cost of buying and storing them. Supposing that for 100 engines of one type it is necessary to stock 20 "spares" of each different part, for 200 engines it will be enough to keep, say, 30 "spares." By reducing the amount of stores kept in stock interest on dead capital can be saved, and the loss on obsolete stores which takes place at the present time would be very materially lessened. These are but instances taken at random of the savings which a unified management might effect.

Working costs compared.

Speaking generally, it is safe to say that divided management means diversity in practice and method which leads to waste on an enormous scale. In addition to this, such diversity makes it difficult to compare the results of the various administrations. Statement No. XVI. is the best attempt that can be made under the circumstances to compare the numbers and costs of the staffs of the three systems, classified under the main heads of expenditure. From this table the reader can see for himself how the cost of the various services in the three administrations varies, and what large economies would result if, under a single management, the costs were all reduced to the lowest scale as yet attained by any one of them.

Statement No. XVI.

Effect of disunion on new construction.

So far the argument goes to show that disunion in railway management, by a mischievous system of rates and by wasteful

organisation, prevents large economies in working costs which could all be realised under one management. But it also operates to encourage a vicious inflation of capital charges which further tend to aggravate the cost of transport. So long as politics are mixed with railway administration, there will always be a tendency to conciliate this or that political interest by constructing new lines, the cost of which cannot be justified directly or indirectly by the traffic they carry. How far the systems of the coast colonies are burdened in this way is shown by Mr. Conacher's report. The Cape railways as a whole are not paying their way. Those of Natal realised a net profit of £8,974 for the financial year 1906-7. But both are earning substantial profits on through traffic. It follows, therefore, that the local traffic is being worked at a loss. The capital of both systems is in fact swelled by an unremunerative expenditure on local lines.

Economies and other advantages resulting from union.

Such are the evils which spring from divided management; it now remains to be seen what difference union of the systems under one management would make. On this subject it will be best to give Mr. Conacher's opinion at first hand:—

> As to the other preliminary questions, there is nothing in the physical character of the boundaries between any of the four Colonies, or in the nature of the traffic of the districts intersected by those boundaries, which either requires or renders desirable the division of the lines into separate systems The Orange River, the Vaal River, and the Drakensberg Mountains,

as political boundaries, are alike devoid of signifiance from the railway point of view, and the continued separate working of the South African Railways can only lead to the expenditure in working expenses of a larger share of their future revenues than is really required to earn them.

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Seeing that a united administration would, if the accounts for 1906 are taken as a basis, enter as soon as formed, into possession of a gross revenue of upwards of 10¼ millions, of which over 6¾ millions were spent in working expenses, ordinary and special, it appears to me only reasonable to expect that a substantially greater proportion of so large a revenue could be retained as profit by one controlling authority. A saving of even one per cent. of those gross receipts would exceed £100,000.

Not less, and probably more, important than these savings are the benefits which would accrue to the railways and to the country as a whole, from the ability of one authority to concentrate its undivided attention upon the working of the lines and the management and development of the business upon them, free from the disturbing effect of inter-colonial differences, and possessing the power, which would necessarily be conferred upon it, of fixing rates for all descriptions of traffic on sound commercial principles and in pursuance of some well-considered policy of general development. Existing rates could then be re-arranged and new rates quoted as and when required without hindrance, additional facilities be given and the entire transport service of the country conducted with the sole object of assisting existing and fostering new industries, irrespective of locality, and generally of developing still further the natural resources of British South Africa. In saying this I assume that under any unification scheme, arrangements would be made for raising in some other way the portion of colonial railway revenue now avowedly applied in relief of general taxation, without which, it is hardly necessary to point out, those commercial principles, as I have previously explained them, could not be fully applied.

Here again it is impossible for me to say to what extent those altered methods of control and management would increase the gross revenue and profits of the railway, but it is manifest that the attitude of a united administration towards the development of traffic generally would be entirely different from that of the existing administrations, seeing that, no matter where within the four colonies opportunities arose of creating new or cultivating existing traffic or industries, such an administration would be assured of its

due share in the fruits of its enterprise and foresight. Possibly also greater economy in future capital outlay might ensue.

If then it is true, as I believe it to be, that under united ownership a larger share of the throughout charges on sea-borne traffic could be secured to the railway of the colonies and a substantially greater profit realised from it, that increased economy in working could be obtained, and more general and rapid development of traffic upon them produced, what is the practical bearing of these facts upon the question of the future distribution of sea-borne traffic now under consideration?

No railway manager, viewing impartially the situation in South Africa, could do otherwise than recognise the favourable position of the port of Lourenco Marques, with its connecting railway, in relation to the trade of a large and what is now a very important district in the interior of the country, as a means of cheapening the expensive land carriage incidental to all the routes at the expense of no undue increase of the less expensive sea-carriage; and, in my opinion, no final settlement of the railway question is practicable which does not give to that circumstance its appropriate weight. At the same time, I regard it as impossible to dissociate the commercial and general interests of the districts referred to, and especially of the competitive zone in the Transvaal comprised within it, from the welfare of the more distant ports, and the efficient working of the railways connecting them with the interior. Large portions of that district can be served more quickly and, with some goods, more cheaply through the Cape and Natal ports than through the nearer port of Lourenco Marques, and the additional facilities for the trade of the country which those ports provide are of such undoubted commercial value that had the position been reversed, and Lourenco Marques been the first instead of having been the last of the ports to be connected by rail with the interior, I have little doubt that the efforts of the inland communities, dependent as they are upon oversea communications, would early have been directed to finding additional outlets to the coast through the older colonies. Even from the exclusively railway point of view this would have been a matter of the greatest moment; as no system of railways for which such an outlet is vital can be regarded as secure with only one, of which part is in the hands of an authority over which the owners of the system do not possess a control capable of being exercised by them at all times and under all circumstances.

The true position of both of the inland colonies is that of partners with the coast colonies in all the routes

from the sea; jointly interested in their efficiency and in equity bound to concur in the fixing and apportionment of such through rates as may be necessary to maintain them in that condition. That this is not the principle on which the existing through rates from the Cape and Natal ports and their apportionment between the several railway systems have been fixed is clear from the historical review I gave when dealing with this question under present conditions, and from documents which have come before me in the course of the inquiry; with the result that the Cape ports have, by reason of the amount of the rates, been deprived of trade they formerly possessed and have made adequate provision for, and as regards the apportionment of those rates, that larger shares of them were originally exacted and are still being paid in respect of the Transvaal portions of the routes from British South Africa ports than are warranted by the customary methods of division, or than the rate of working expenses upon such portions, shown in Appendix R., requires. The problem of to-day is how to re-adjust the relations of the several interests which have grown up under those conditions so as to remove all reasonable ground for complaint without inflicting permanent loss upon any of them.

In my opinion that can only be done by realising and making use of the additional profits obtainable from the ownership and working of the British South African railways as one system. The amount of those additional profits would, I believe, be such that, ... any colony, which, in arriving at a proper basis for such a scheme, might have to concede some part of the railway revenue it now enjoys, would be more than compensated for that concession by the excess of its share of the united profits over the profit which, standing alone, it could earn for itself. So desirable a result cannot be brought about without the co-operation of all the colonies, and no colony therefore, whatever may be its present position in relation to inter-colonial railway matters, is without something of value to contribute to the common good in the formulation of any scheme for the fusion of railway interests.

In conclusion, it should not be overlooked that with the disappearance, under united ownership of the railways, of the conditions which, under separate ownership, have prejudicially affected the relations of the colonies with each other, new conditions would arise which, without the necessary safeguards, might perpetuate in some form, if in lesser degree, differences now existing. I refer especially to the effect of railway unification upon the interests of the harbour and dock authorities in Cape Colony and Natal, and upon the interests of the commercial communities at the ports controlled by those authorities.

In my opinion it would be of the utmost importance to secure that any body created for the purpose of working and managing all the railways should be equally interested in all the British colonial ports through which sea-borne traffic would pass. This I suggest could best be done by combining the ownership and working of the harbours and docks of those ports with that of the railways. The ownership and working of similar undertakings by railway companies has been one of the most successful features of railway enterprise in Great Britain, and has, in my judgment, proved highly beneficial to the trade of the country; and seeing how large a proportion of the trade of the ports of British South Africa is rail-borne, I have no doubt that, in addition to the particular advantage referred to, substantial economies could be effected in the cost of working the harbour undertakings if they, as well as the railways, were placed under one administration. Such an administration would be doubly concerned in securing fair treatment for all routes; first, because of its direct interest in the revenues of each colonial port and, secondly, because of the value to it of obtaining a fair share of sea-borne traffic by all the railway routes, as a means of contributing to the general improvement of the railway service in the several districts through which the separate streams of such traffic would flow.

My opinion, after the fullest consideration of the whole question of the future distribution of sea-borne traffic is, that only by unification of the railways, and still more by unification of both railways and harbours, can that distribution be satisfactorily arranged; and that without unification the legitimate share of the railways and harbours of British South Africa in the throughout charges for the conveyance of its oversea trade is not likely to be obtained.

In dealing with this matter, I have not taken into account the advantages of a financial character which the fusion of such important interests as those of the railways and harbours of the colonies would be likely to bring in its train, as beneficially affecting the terms on which capital for extensions could be raised. These might and probably would prove to be of considerable value, and are not without a bearing upon the ability of a united administration to further improve the conditions applicable to the conveyance of sea-borne and other traffic in the future.

Posts, Telegraphs and Telephones.

Functions of post offices.

An examination of the postal service reveals the same causes at work as in the rail-

ways, wasting the substance of South African taxpayers. It is the business of the post office to arrange at certain rates the rapid and punctual transmission of messages by letter, telegram and telephone, or of money and of small parcels from point to point within its own country, and between its own and other countries. It is apparent that a post office is among the least localised of all public services. Its organisation, less than that of any other public service, requires adaptation to the peculiarities of each locality, such as is needed, for instance, in administering education or agriculture. Post offices, in fact, are much of a pattern all the world over, and the more their methods can be assimilated the better for everyone concerned. The only possible reason for having six separate systems in South Africa is that no general government exists under which they can be consolidated. Greater efficiency at less cost could be attained under one organisation than is possible so long as the business is split up among any number of independent systems. Uniformity in the classification of the various grades of officials, in the standard and system of examination required for their admission, in the system of training them and of fixing their pay, pensions, and the rules governing their discipline and leave, would all make for economy. The variety of different stamps, circulars and books required, as well as their printing, would be reduced and the cost cheapened accordingly. As in the case of the

railways, uniformity in the type of instruments and other stores would be a source of further economies, and if the stores were concentrated smaller stocks in the aggregate could be kept on hand. Lastly, there would only be one postal and telegraph law throughout the country.

Multiplication of postal systems creates superfluous work.

Everyone knows what a number of different arrangements have to be made for dealing with the various kinds of business which the post office handles. The charges to be made per ounce for each letter or parcel, for the transmission of messages by telegraph or telephone, and for the conveyance of different sums of money varying in each case according to the country to which they are despatched, have all to be fixed. Wherever messages, money or packets are to pass between one postal system and another, the arrangements can only be completed between the two or more postal systems involved as a result of negotiation between them. The administrative staff of the South African post offices is largely occupied with completing and improving these multifarious arrangements with countries all over the world. But their labours are unduly enlarged because under existing conditions it is almost as troublesome to make arrangements between one South African post office and another as between a South African post office and a foreign country. If all South African post offices were united in one organisation inter-colonial questions which now require months

and years of negotiation, and then perhaps never come to an issue at all, would be decided by a stroke of the Postmaster-General's pen. For instance, a proposal to accelerate the mail train between Johannesburg and Cape Town affects Natal and the Orange River Colony no less than the other two colonies, and may involve an agreement between the four different governments, unless all are to benefit at the expense of one or two only. The building of telegraph and telephone lines between two colonies raises similar difficulties. No two post offices have the same arrangement with the railways for the conveyance of mails nor for telegraphic business. In Natal the post office builds and maintains all telegraph lines, and maintains also the block signalling system of the railway. The post office of the Cape Colony also maintains railway telegraph wires, but not the block system. In the Orange River Colony the railway department builds and maintains the post office lines on the railway. In the Transvaal, while the railway administration maintains its own telegraph and telephone system with the exception of the telegraph wires from Klerksdorp to Fourteen Streams, it has nothing to do with maintaining the post office telegraphs and telephones. If there were one postal and telegraphic administration for the whole of South Africa, there would be no need of complicated statistics for the purpose of assessing the amounts to be paid to or by each colony for the transit of mails or telegrams.

Voting power at postal union conference monopolised by Cape post office.

The principal governments of the world are united in what is called a postal union, and from time to time a conference is held by representatives of all the different systems, for the purpose of improving the methods of transit among them. Canada, Australia and New Zealand each have votes at this conference, but the members of the union are naturally not prepared to accord six votes to the South African post offices. At the last conference only the government of the Cape Colony was allowed to vote. This vote was entirely in the hands of the Postmaster-General of the Cape Colony, though in giving it he referred to representatives of other South African governments who were present.

The mail contract.

Reference has already been made to the mail contract, which involves the annual payment of £135,000 to the shipping companies. Each country concerned in the maintenance of the packet service contributes towards the payment of this subsidy in proportion to the mail matter (other than parcels) sent by steamers. The actual contributions for 1906 are shown in Statement No. XV.

Statement No. XV.

How it is arranged.

It will be seen that the British Government pays more than half the subsidy. The negotiation of the contract, however, was left in the hands of the Cape Government, though a representative of the General Post Office in London and the Agent-General of Natal were informally associated with the Cape representatives during the negotiations. The Cape is solely responsible for the payment of

the whole of the subsidy. The other South African States merely assented to the arrangements made by the Cape, and pay their contributions to the Cape. The contract was not binding until it had been ratified by the Cape parliament.

Here again, as in the case of the postal union, the people of South Africa are compelled to act through one government, which only represents a section of the community.

Communications as administered by a National Government.

Future possibilities sketched.

In this account of the various means of communication, we have seen how many evils arise from the want of central control. Before closing this chapter, we may attempt to sketch the changes which might follow if all the different systems were united in the hands of a single South African government.

Danger to commercial undertakings of political control.

To begin with it would become possible to safeguard principles of administration, which ought to be continuous and supreme, and to prevent them from being thrust aside by the political exigencies of the hour. If the State attempted to conduct the whole banking or insurance business of the country, the dangers which attend the public control of commercial undertakings would be evident at once. In lending money or insuring life it would be madness to admit any consideration other than that of securing liabilities by adequate assets. The policy of the managers ought to conform to the changes in the business condi-

tions of the country but not to those of public opinion. They should scarcely allow themselves to know what the popular sentiments and passions of the moment are. But governments are the children of public opinion, and if the banking or insurance business of the country were controlled by a minister responsible to parliament, business principles would often be sacrificed to the demands of political supporters. Rates might be quoted to suit the calculations of the wire-puller rather than those of the actuary, and policy, which should follow the variations of markets, might be shaped by the change of parties and governments. It was a wise provision, therefore, in the Act establishing a land bank for the Transvaal, which denied the government any discretion in the terms offered to borrowers, and assigned the decisions of all such matters to an independent board.

How to avoid these dangers by assignment of railways to commission exempt from political interference.

Exactly the same considerations apply to the management of railways, and wherever these are controlled by the State the mischief of political interference has been felt. In the Cape Colony, indeed, a commission was appointed to report on the matter, so lately as February, 1907. The democracies of Australia have found a remedy in placing the railways, like the land bank in the Transvaal, beyond the reach of direct political control. As will be seen from the summarised account given in Statement No. XVII., the railways are usually placed under one or

Statement No. XVII.

three commissioners, who are more or less exempt from the immediate supervision of the government and parliament of the day. But, as we have already seen, this remedy cannot be applied in South Africa so long as she is divided among a number of governments playing each for its own hand and using its railway as a card in the game. Under a unified government that fruitless game would cease once for all, and the railways could be placed in the hands of one commission, whose sole object would be to provide South Africa with efficient transport at the lowest possible rates. If the system of rates is to be fixed on a really economic basis, the commission must be accorded the same freedom in quoting terms as the board of the Transvaal land bank at present enjoys; that is to say, as much discretion as a company would grant their manager. In the case of a company there is a danger that this freedom may be abused. They may quote rates which are clearly unreasonable, or some unfair advantage may be given to some particular interest or industry, in which perhaps the railway directors are privately concerned. As a security against this danger, special courts have been established both in England and America before which the railway authorities can be brought by an aggrieved party to justify any special rate which they may have quoted to a rival interest. Unless the railway can show that the rate is justified on purely economic grounds, it is annulled by

the Court. As things stand in South Africa such a complaint would be raised in parliament, whose members, being laymen in railway matters, cannot as a body appreciate the issues at stake. In order to make their position in parliament defensible, the government compels the management to adhere strictly to a rigid schedule of rates such as laymen can understand, and this infallibly results in loss of remunerative traffic, and so prevents the reduction of rates on the traffic already secured. There can be no question that railway rates are a matter upon which appeals should lie, not to a parliament of amateurs, each trying to please his own constituents, but to an expert court with no external influences to affect its judgment. But these principles can be applied to the railways of a government just as well as to those of a private corporation. If a railway commission were created with power to quote whatever rates would most tend to general cheapening of railway transport, a right of appeal against any particular rate to the supreme court of South Africa would provide the surest guarantee to all parties against injustice.

Railway commission might also control customs.

As we have seen, the administration of harbours by local boards is a survival of the past. Like Kazerne goods station, which could scarcely be managed to advantage by a committee partly elected in Johannesburg, ports should be treated as terminal stations of the line. If Mr. Conacher's advice is followed, they would be entrusted to the same

commission as the railways. Control of the customs might then be assigned to the same authority. So long as harbours, railways and customs are severally worked under a number of different administrations, the importer is often obliged to deal separately with and to make separate payments to each; but the moment these various services were brought within the scope of one authority the landing, transport and custom charges could be collected in a single payment. The importer would obtain delivery of his goods with no more trouble than is now afforded by the delivery of a parcel through the post.

Rivalry of the ports and its results.

There remain the questions arising from the rivalry of the various ports, the results of which are shown in the diagrams inserted on page 34 of Lord Selborne's memorandum, and discussed in the following terms:—

It will be seen that in November, 1902, over 29,000 tons of merchandise for the Transvaal entered the Cape ports, over 22,000 by Durban, and only a little over 14,000 by Delagoa Bay. The variations can be followed by the eye from month to month till August, 1906. In that month the Cape ports have fallen from over 29,000 tons to under 12,000 tons. The foreign port on the other hand has jumped from a little over 14,000 to a little over 21,000 tons. Delagoa Bay is getting more than all the British ports put together. The same thing is shown in another way by a second table where the proportion of trade falling to each is traced. In November, 1902, 79 per cent. of the trade is going to British ports, 21 per cent. to the foreign port. Four years have passed under the British flag, and 44 per cent. is going to British ports, and 56 per cent. to the foreign port. Mr. Middelberg's offer of one quarter of the traffic to the Transvaal was refused by the Cape Government in 1895. In the course of 1905 the share carried by the Cape railways amounted to 11 per cent. of the whole.

Results of railway union to coast colonies and inland colonies.

This position of affairs, which practically remains unaltered to-day, is such that the Cape ports, at all events, have little left to lose. As Mr. Conacher observes, a South African railway administration which included the ports could scarcely afford to ignore the interests of its own terminal stations. On the other hand, the inland colonies would also benefit, because the union of the systems would mean for them a great reduction in the cost of living. At present the greater part of the traffic sets inland. Some time must elapse before it is balanced by the return traffic to the coast. The result is that so long as profits are made on railway transport every man contributes to those profits in proportion to his distance from the port, a basis of assessment which cannot be sustained by any principle of just taxation. But it is not merely that the resident at Pietersburg or Kroonstad is taxed more heavily than the resident at Volksrust, Harrismith or Springfontein. In addition to all this the inhabitants of the inland colonies are taxed for the benefit of the Cape Colony and Natal, because, as Mr. Conacher shows, both these administrations are making a profit on their through traffic. It is safe to assume, therefore, that the railways will only be united on the understanding that their earnings, like those of the Transvaal land bank, are separated from the general revenues of the country. Any profits realised must be applied first of all to building up the necessary reserve fund

required to prevent dislocation of rates in years of depression. Any further profits thereafter will be available for the cheapening or improvement of the service. The advantage of this to the inland consumer may be easily measured. In 1906 the three systems earned $10\frac{1}{4}$ millions, and spent $6\frac{3}{4}$ millions on costs of working, leaving a balance of $3\frac{1}{2}$ millions. From this must be deducted $2\frac{3}{4}$ millions for payment of interest and sinking fund on capital charges, after which there remains a net profit of $\frac{3}{4}$ of a million which is levied entirely from the inland consumer. But in addition to this all the coast administrations are making substantial profits on through traffic to the inland colonies. It follows that by the union of the railways the cost of living and production in the interior of South Africa would at once be cheapened, apart from the economies which would follow gradually from the reduction of their working costs. It is true that if South Africa could not afford to sacrifice the revenue now derived from railway profits, it would have to raise it by means of customs or by some ordinary method of taxation, which would distribute the burden with even weight irrespective of locality.

Re-adjustment of incidence of taxation.

The freedom of the commission charged with the administration of railways and harbours would of course be limited to certain matters such as rates, staff, and so forth. If the Australian examples be followed, their annual expenditure would have still to be

Minister of communications. His position.

voted by parliament. In any case the legislature would have to deal with the selection of new lines for construction and the provision of borrowed capital for the purpose. There must, therefore, be a minister answerable to parliament for communicaitons, to whom the railway commission would look as their official chief. But there are other duties which might with advantage be undertaken by the minister of communications. The fact that the post office is the only commercial enterprise undertaken by the Imperial government has tended to create a certain close connection between that department and the Treasury. This example has led, in most of the colonies, to the association of the postal service with the portfolio of the treasurer, though in Natal it is administered by the Colonial Secretary. If, however, in the government of South Africa there were a minister of communications responsible for railways, harbours and customs, there would be certain advantages in placing him in charge of posts and telegraphs as well. In the first place, one minister would be able to settle the numerous issues which arise between the post office and the carrying services, as to questions of transit. In the second place, the telegraph systems of the posts and railways might be unified to such an extent as experts might find desirable. In the third place, the minister whose duty it would be to deal with the shipping interests would likewise have the settlement of the mail contract in his hands.

Strengthened position of S.A. in respect of shipping.

It is needless to enlarge on the altered position of the South African government when negotiating with the shipping interests. In the place of a jangling conference, seldom united in action and never in mind, the shipping interests would be faced by a single minister with the railways, ports, mail contract, and the government imports of the united country under his control. Behind that minister would stand the cabinet, backed by a majority of the South African people who, for the first time in history, would command the approaches to their own house. But their interests are not really opposed to those of the shipping companies. It is true that one government would handle questions of shipping with infinitely greater advantage than they can be handled by many. On the other hand, union is certain, in course of time, to produce an expansion of trade in South Africa and prosperity on a scale which cannot be hoped for so long as her strength is consumed and her system shaken by internal conflict. The same divisions which have left her humbled and impotent in the hands of the shipping conference, sap the very commerce from which its profits are derived. They themselves have already declared that they have more to gain from the strength of a united South Africa than from the weakness of her distracted States.

CHAPTER IX.

The Production of Wealth.

The next branch of State activity which we have to consider is directed to promoting the production of wealth by individuals. Material wealth in a great measure consists of the products of the earth, whether these take the form of raw materials, such as corn, wool or iron, or of manufactured articles, such as bread, clothing and knives. There are therefore two stages in the creation of wealth, the production of raw materials and the manufacture of such materials into finished articles. So far South Africa has devoted herself to the first, and has scarcely attempted the second.

The constituents of wealth.

Two stages in its creation.

Raw materials.

Raw materials are of two kinds, the products of the soil and water on the earth's surface, and the mineral products drawn from the substance of the earth itself. The production of the first occupies the farmer and fisherman, of the second, the quarryman and the miner. In methods of production a change for the better is always taking place. Existing methods are found to be wasteful and are replaced by more efficient ones. Producers who learn new ways displace those who cling to the old, and success comes to depend more

Improvement in methods of production.

and more upon the acquisition and practice of fresh knowledge.

Mining and manufacturing industries, being organised on a large scale, can prosecute research for themselves.

In some branches of industry, particularly in countries at an early stage of development, fresh knowledge of this kind can only be acquired and applied by the government. This is peculiarly true of farming, because this industry admits less than any other of organisation on a large scale. In the more artificial processes of mining and manufacture division of labour can be carried very far, which means that such industries can be organised in great regiments under one control. Gold mines, diamond mines, and breweries are examples familiar to this country of industries carried on as big undertakings. The persons who direct them are few and powerful, and large funds are concentrated in their hands, so that money is available for research. Brewing and mining companies are large enough to maintain their own chemists and consulting engineers. In the manufacturing and mining industries moreover new methods and appliances can generally be appropriated for the benefit of the inventor. In some cases they can be kept secret, and in others patented. The profits which accrue from the grease plate for instance, used for separating diamonds from worthless stones, are such as to encourage the enterprise of future inventors. The help of the State is not required in industries like these, which of themselves offer rewards sufficient to encourage private research.

Farming is the industry of small men,

With farming, however, it is otherwise. Certain plants in certain climates and soils can be produced on a large scale as the result of elaborate organisation, but great plantations employing labour in large gangs are only to be found in tropical countries not suited to Europeans, where native labour is plentiful. The ranches and sheep runs of newly settled or semi-arid countries, though large in area, are usually owned and managed by a few men. A great number of small units of production, instead of a few big ones, are the characteristic feature of the farming industry. From the nature of things this must be so. The various parts of each farm often differ in soil and aspect, and are suited to crops of different kinds, and these crops must be changed from year to year. To turn land to the best advantage, the farmer must have a particular and intimate knowledge of his own acres. Compared with mining or manufactures, farming is a scattered industry which does not permit of elaborate organisation. The land must be worked by men who have learned its local peculiarities, and know how to rear cattle, grow fruit, corn or fodder, and manufacture dairy produce, in such a way that each acre may be put to its best use. The profits are usually scanty in comparison with the labour and skill needed to earn them. But farming is the industry of many masters and few men; and the passion for independence, rather than for material reward, attracts men to the land.

In the actual practice of their business, farmers acquire that intuitive skill and knowledge which is essential in all industries. At the same time there is much in the growing of plants, and the rearing of animals that can only be learnt by scientific research; but the ordinary farmer has neither the time nor the training for such studies; nor, like the mining or brewing companies, has he the money to employ others upon them. Practical farmers could scarcely of themselves invent a serum to immunize mules from horsesickness, or discover how to render prosphates available for plant use. Much of the agricultural research in older countries has been conducted by scientific societies and by rich men, who have practised model farming, either as a hobby or from public spirit. The lack of such agencies, however, has forced many governments to attend to the question themselves, and when some governments begin to do this, others are compelled to follow suit. Cheap and rapid communications and the refrigeration of perishable goods have brought the farmers of one country into close competition with those of others. Improvements in the methods of cultivation or breeding made in Wiltshire, Winnipeg or Tasmania may be felt directly by the farmers of Malmesbury and Standerton. All the countries of the world are competing in the race for improvement, and none can afford to be left behind.

who cannot afford either time or money for research.

Government is therefore forced to subsidise research.

Apart from this question of competition, the need for scientific research and experiment is greater in the new countries than in

Research the more necessary in new countries because of the lack of empirical knowledge.

the old, where farming is founded on centuries of experience, which have proved the peculiarities of soil and climate. The art of farming cannot be imported ready made, like the art of cotton spinning or the manufacture of steel. Every new country must in a great measure work out the application of the principles of farming and recreate the industry for itself, and, for the reasons already given, State aid is necessary for this purpose.

The State must seek knowledge and also apply it.

State aid should be given, first in the way of research, secondly by the application of the knowledge it yields. Farming consists in promoting organic growth, and its greatest foes are the pests which destroy growth. As soon as the nature of diseases and the way in which they are spread is understood, the next duty of the State is to enforce the requisite precautions, or to apply them for itself. While government may forbid the importation or movement of diseased stock, or the adulteration of artificial manures, it must itself undertake the extinction of locusts. But much of the knowledge relating to agriculture can only be applied by farmers themselves in the practice of their industry. Government therefore, has not merely to obtain knowledge as a foundation for law and administration, but has likewise to indoctrinate the minds of the farmers themselves. It must not only legislate and take action, but must also provide a system of agricultural education.

Government may afford direct aid in various directions.

In addition to this government may undertake to cheapen for the farmer things which he otherwise could not or would not ob-

tain for himself, such as trees for planting, prophylactic sera, or disinfectants. It may help him to obtain artificial manures, implements, stock, fencing, machinery and other requirements of agriculture, either by procuring them wholesale and disposing of them at cost price, or by providing cheap transit for them on the railways. It may even provide cheap money by placing its credit at the disposal of farmers. It may also improve the productive powers of the land in a particular area by irrigation, applied in cases where the profit to be derived from such schemes would be too distant and too small to attract the investment of private capital.

Forestry.

Lastly, the State must attend to the national supplies of timber. Here again is a case, where the returns of industry, however great, are too long postponed to attract private enterprise, for investors will not put out their money for the sole benefit of unborn heirs whose interests are the peculiar trust of the State. Forestry, therefore, is an enterprise which no one but government can undertake on an adequate scale. As the authority in charge of railways, the State in South Africa is always a large consumer of timber, and as owner of the public estate it can turn to account lands useless for the purpose of ordinary settlement, like the slopes of Table Mountain, by planting them with trees.

Activities of the state in promoting agriculture classified.

The activities of the State in promoting agriculture may thus be classified for the purposes of discussion under six heads.

1. Research.
2. Restrictive legislation.
3. Administrative action.
4. Agricultural education.
5. The provision of various material aids to agriculture.
6. Forestry.

The work under these six heads, at present initiated by one or other of the governments of South Africa, may now be described in greater detail.

1. Research, practical and scientific.

The prosecution of practical enquiry on the experimental farm goes hand in hand with the more strictly scientific work carried on by the botanist on his seed ground, and by the chemist and bacteriologist in their laboratories. The managers of the farms conduct experiments in the practical cultivation of crops, to show which of them is best suited to the country, what is the best mode of treating the soil, and what manures each different crop requires. It is their duty, in fact, to work out a system of farm management from the data supplied by a number of specialists. The agrostologist collects grasses and other indigenous plants, grows them and tests their feeding value. He also cultivates fodder plants of other countries, in order to find how far they can be acclimatised to the soil of South Africa. In the case of vines, and fruit generally, of tobacco, trees and other vegetable products, experts are at work in each branch of culture. In some cases, such as

those of wine and tobacco, methods of manufacture, as well as of cultivation, are the subject of research. Enquiries are also conducted for the purpose of ascertaining the most suitable type of horses, cattle, sheep, pigs, poultry and other live stock, and practical experiments are made in the treatment of dairy produce and the keeping of bees. In the course of these enquiries problems are frequently met, which can only be solved by scientific research. The chemist is employed to ascertain the constituent elements of the soil, of food stuffs and of manures so that the cause of success or failure in any branch of production may be traced and the knowledge so gained be applied elsewhere. The botanist studies the conditions of plant life in South Africa, and the diseases from which plants suffer. Similarly, the bacteriologist is working out the nature of animal diseases, in order to discover means for their prevention and cure. The entomologist studies the life and habits of insects in order that the farmers may distinguish friend from foe. While he teaches them to propagate the lady-birds, who cleanse their orchards from blight, he shows them how to combat white ants, locusts, ticks, and other "mortal bugs of the field."

Irrigation.

Somewhat apart from these studies are enquiries into irrigation, and the collection of information as to the rainfall in different parts of the country, and as to the physical formation of the various areas; so that the places where water may be stored by building

dams may be ascertained, and, in regard to the "duty" of water in South Africa, what is the quantity required by the land for proper cultivation.

Co-operation.

Even the mercantile side of farming is now made the subject of systematic and detailed enquiry by the State, for experts are employed to study methods suitable to the conditions of South Africa, whereby farmers can unite for the purpose of buying what they require and selling what they produce, on the most advantageous terms.

2. Restrictive legislation.

In this way the governments of South Africa are accumulating a constantly increasing volume of data on all matters relating to farming. As we have seen, such knowledge must be applied in various ways. Each government has laws and regulations of its own for preventing the spread of diseases, whenever they appear within its territories. Periodic dipping of sheep is prescribed with more or less stringency. Where tick fever appears amongst cattle, the movement of animals from or across the infected areas is prohibited, until the disease is stamped out. The effect of such measures, however, is greatly impeded by the fact that different governments are administering diverse laws with varying degrees of efficiency and skill. Again there are noxious plants which injure, not only the farmers who fail to eradicate them from their own lands, but their neighbours to whose lands they spread. The hard burrs of the Xanthium Spinosum, for

instance, lodge in the fleeces of sheep and, by injuring the machines of the manufacturers, depreciate the value of South African wool. The State therefore compels the farmer to destroy such weeds. It forbids the burning of grass or bush by individuals on land not farmed by themselves. It regulates the use of water from rivers to which many separate owners have a claim. It attempts to offer protection to certain branches of farming, by prohibiting or imposing heavy duties on the export of ostriches and Angora goats. The expedient used in this instance for overcoming the difficulty of simultaneous legislation is curious. The Cape legislature enacted a law forbidding export of ostriches, except to South African territories in which an identical law had been passed. Every colony wishing to start or extend the feather industry is thus obliged to adopt, without amendment, the law framed by the Cape, however defective its terms may seem. South Africa has as yet no laws prescribing standards for artificial foods and manures.

3. Administrative action.

Restrictive laws and regulations require to be enforced by administrative action. Many of the worst diseases and pests, East Coast fever, phylloxera, and the codlin moth, for instance, are imported from oversea, and therefore it is necessary to keep a vigilant watch at the ports upon all imported animals, plants and fruits. As things are, this can only be done by the coast colonies. The inland

colonies which would suffer by their neglect are also attempting the far more difficult task of guarding frontiers which are artificial. As we have seen it is not always enough for the State to make restrictive laws and to enforce their observance on the individual. Some of the pests can only be controlled by positive action on the part of the government itself. This is the case with locusts which can only be dealt with effectively in the hopping stage. The farmer owning the land where the voetgangers first appear cannot be expected to bear the cost of destroying swarms, which as soon as they take to the wing will carry destruction far and wide. Government has therefore to make arrangements which will enable a central office to be informed of the appearance of every swarm, so that steps can be taken at the public expense to destroy it.

4. Agricultural education.

The next duty undertaken by South African governments is to impart the knowledge which can only be applied by the farmer for himself. There are colleges in conjunction with the experimental farms, where for a small charge boys are educated in the science and practice of agriculture. Farmers are likewise encouraged to come and see for themselves the results of the experiments conducted on these farms. The experts of the agricultural departments are sent through the country to give instruction to farmers on their own ground. In this way all the latest methods of viticulture, fruit growing, poultry

raising, dairy work, stock breeding, bee-keeping and other branches of agriculture, are taught. Finally, agricultural knowledge is distributed by means of well printed and illustrated pamphlets and journals which are issued, usually in both English and Dutch, to any farmer who will take the trouble to read them.

Practice and value of co-operation.

We have already observed that the actual farming of land does not lend itself to organisation on a grand scale as manufactures do, because it requires the individual attention of small producers. But the treatment and marketing of produce often needs to be conducted on a larger scale than the operation of raising it, and for these purposes farmers can combine with benefit to themselves. Under the conditions of modern commerce produce must be finely graded. Dealers and manufacturers may require to purchase goods of the same grade in great quantities at a time, or they may need a continuous supply of goods of one or more grades from week to week. Farmers who can offer the wholesale buyers produce in the most marketable form, so as to comply with their trade requirements, are certain to realise the best prices. The individual farmer seldom handles enough produce to make proper grading possible, nor can he afford the plant and staff required. But if a number of tobacco farmers for instance can combine in a co-operative association, they may concentrate all their tobacco at one establishment, where it can be graded into

regular brands, cured in bulk, and placed on the market in the most profitable way. Dairy farmers may not severally be able to give dealers regular supplies of milk, butter and cream; but by establishing a central creamery, where all the milk of the country side can be dealt with mechanically in the best and cheapest way, they may be able to secure regularity both in the quantity and quality of the supply and so greatly to improve its value. The successful practice of co-operative methods, which are simple only on paper, is being learned by hard experience in many countries. The governments of the Cape Colony and the Transvaal now employ experts whose duty it is to teach the farmers to practise those methods of co-operation which have proved successful, and to avoid those which have failed. The experts also assist in organising co-operative societies.

5. Material aids. We have next to consider the various ways in which the governments of South Africa afford direct assistance to the farmer. They undertake free of charge, or at a reduced cost, to analyse his soils, to test his seeds, and to provide sires for the service of his stock, trees for plantations, and sera for inoculation against disease. Seedlings are supplied to landowners at cost price by each of the governments, in order to encourage the planting of private ground, a form of improvement in which the older population are too often backward. In the Transvaal at any rate there are districts, where the

thriving homesteads of German settlers are everywhere marked by plantations, which afford fuel to the family, fencing for the farm, and shelter to the stock. The Cape Colony has a supply of guano on the islands off the west coast which is reserved for the use of its farmers alone.

Irrigation.

On much the same principle the various governments assist the farmers in the matter of irrigation, by affording gratuitous advice as to the construction of dams and furrows on their land. Money is also advanced for the purpose, and boring for water is undertaken at cheap rates. But the State does not limit itself to assisting the individual. Great dams must nearly always be constructed by the State, either because the land affected by the supply is in the hands of a large number of people, or because the return on the outlay is too slow to attract private enterprise. Both these difficulties governments can overcome. They can pass legislation, enabling them to expropriate the necessary land and to charge water rates on the properties benefited, and they can borrow money on their own credit to carry out the schemes. Thus the State, by constructing great storage works or irrigation canals, can put large areas of land under water and bring them under close settlement.

Assistance to individual farmers.

Projection and construction of large irrigation works.

Land banks.

Governments also undertake to supply cheap capital to farmers by means of agricultural banks. Laws establishing such banks have been passed in the Cape Colony and in the Transvaal. In the Transvaal money to

the extent of two and a half millions has been provided by loan. Money obtained from the banks and trust companies is said to have cost the farmer about ten per cent. when all charges are taken into account. The new bank is to provide the farmer with money at six per cent. on the security of his fixed property. Its utility is not to be gauged entirely by the amount advanced. The effect of its competition in reducing rates of interest charged to farmers by other lenders has also to be taken into account.

6. Forestry.

More or less money is spent by all the governments on the work of afforestation. With the exception of a certain amount of timber, cut for wagon making and for sleepers in the virgin forests of Knysna, or produced in Natal, South Africa imports the whole of the wood she requires. In the middle of the Rhodesian forests, mines are to be seen equipped with Baltic pine. In a few years, however, the Cape Colony will be cutting sleepers from the plantations laid out by the forestry department on public lands. The other colonies have followed suit, but some time must elapse before their plantations are ripe for the axe.

General review of the position. Functions of national and local governments distinguished.

In the foregoing pages we have given an account of what the State is accomplishing for agriculture, without attempting to show how much of this work is done by one government and how much by another. The varieties in the form and matter of the law relating to agriculture, as well as in administrative

action, are endless. Laws and methods of administration differ from year to year, and any account of them would be so tedious as to defeat its purpose. Our object is to provide materials for enabling the reader to decide which of the functions of government are proper for a local and which for a national administration. For this purpose it is enough for him to know what can be done to promote agriculture, and what governments in South Africa have actually attempted. The principles already discussed, more especially in the pages dealing with public health and education, will then guide him to the conclusions for which he is seeking.

1. Research.

As in the case of public health it is impossible to localise the benefits of research. Laboratories and experimental farms of all kinds should certainly be transferred to the national government.

2. Restrictive legislation.

Laws and measures for the prevention of pests ought in their main provisions to be uniform and are therefore a matter for the national legislature. How great is the need of a single legislature for South Africa is evidenced by the frequent but fruitless appeals made by the federated agricultural societies to the various colonial governments for the passing of simultaneous and identical laws. Some of these appeals will be found in the extracts from the minutes of the Inter-Colonial Agricultural Union of South Africa, quoted in Statement No. XIX.

Statement No. XIX.

3. Administrative action.

It is difficult to emphasize too strongly the importance of natural frontiers, as contrasted with those which are merely political, in any measures directed to the exclusion of pests. A government responsible for preventing the entry of disease at any point on the coast, can do infinitely more to protect the Transvaal farmers than their present government can effect with frontiers such as those which divide them from the Cape Colony, Natal, the Orange River Colony and Rhodesia. In the matter of locusts the action of a national government is imperatively required; for one colony, however diligent it may be in taking the necessary precautions, cannot protect itself against locusts bred in the neighbouring colonies. The necessity for united action throughout South Africa against locusts was so apparent that a conference was held, which led to the establishment of a central bureau at Pretoria. It is the duty of this office to collect information as to the places where swarms are bred, the times of their appearance, and the direction of their flight. The difficulty of getting the several governments to work together can be judged from the report of the head of this bureau, who remarks:—

The difficulty of timely and concerted action under present conditions.

"We are supposed to be able to warn the various colonies of the approaching invasion of locusts. Under the present arrangement it is impossible to do this at the time that they leave the Kalahari from the 1st March onwards. The report cards from that region have first to go to Cape Town where they are examined. They are then sent on to us and reach Pretoria from two weeks to a month after the first observation has been made. During that time the whole of South Africa might be covered with flying locusts."

A series of resolutions were passed at the conference setting forth the lines upon which concerted action should be taken by all the governments of South Africa. Such action, however, requires legislation by each separate government and the necessary laws have only been passed by Natal and the Orange River Colony.

Proper relations of national to local government.

The assumption of responsibility for excluding pests or restricting their spread is quite consistent with the delegation to local authorities of wide powers to make and enforce laws in their own jurisdictions. This can be done without risk if power is reserved to the national government to act in default, where the neglect of a local agency imperils the safety of the country at large. The principle of delegation already appears in the present method of administering the law for preventing the spread of cattle disease. In each district of the Transvaal, for instance, the local veterinary officer of the government acts in conjunction with an advisory committee consisting mainly of farmers. If the district is clean, the government officer can always count on the committee's support in maintaining the exclusion of cattle from tainted areas beyond its borders. If, however, the committee of an infected district press for the relaxation of the regulations which forbid the movement of cattle to other areas, the government declines to risk the safety of the country at large by acting on their advice, and is sure of support from the

committees of the healthy districts. In the larger field of a united South Africa, the principle of delegation would operate in the same way. The admirable methods of the government of the Orange River Colony and the zeal of the officers by whom they have been applied, have almost eliminated scab. The Orange River Colony sheep-farmers are reaping a rich reward from the special price which their wool now commands in the markets of the world. However close the union of South Africa may be, it will not deprive the people of this colony of the power to exclude infection coming from territories whose inhabitants have shown less prudence and enlightenment than themselves, so long as the details of administration are delegated, as they must be, to local authorities. On the other hand the national government should retain the power of enforcing a proper standard on backward authorities in other parts of the country. All the experience of the United States, of Canada, and of Australia, goes to show that a national government can be trusted to take a wider and more enlightened view than local governments. Naturally it is so, for the local governments must always draw on the second rank of politicians, while the weightier responsibilities of the national government will attract to its service the pick of public men. The standard of its policy therefore conforms at least to the highest standard adopted by any of the provincial governments, not to

their average standard, far less to that adopted by the more backward of the States.

4. Agricultural education.

How far the teaching of agriculture should be assigned to the central or local authorities must be decided on the same principles as those already applied in Chapter VII. to public education. The teaching of agriculture to children must be dealt with as part of primary education, or at least as coming within the lower divisions of secondary education. Their administration should, therefore, be left to local authorities. They also might undertake the practical instruction of farmers by experts and the provision of model farms; for they will best know how to adapt the instruction given to the style of farming practised in their own areas.

Training of experts.

On the other hand, the training of experts and teachers can only be undertaken by a national government. It is the absence of any such government in the past which accounts for the fact that most, if not all, of the agricultural experts employed by the governments of South Africa are imported from Great Britain, the United States, Canada, Australia or Holland. To maintain institutions capable of producing their own agricultural teachers is beyond the means of provincial governments. Part of the training of the teacher should include a first-hand study of the most recent methods practised abroad. Knowledge of this kind, however, may be positively misleading, until it is qualified by such teaching in this country as will enable

the student to see how far those methods are applicable to its soil and climate. In the case of agricultural instructors, it is specially necessary that the training should be wide and thorough. Otherwise incalculable mischief will be done by giving ground to the distrust of experts in the rural mind, which presents a most serious obstacle to the progress of agricultural education. For the same reason it will be an advantage if the instructor can be drawn from the ranks of the farmers themselves. Every teacher who comes from over-sea, has to start first of all by learning the character of the people he is to instruct. Farmers will not take new and difficult truths from the mouth of a stranger, though they would accept them at once from one whose thoughts and language they recognised as akin to their own. An American set to stimulate English farmers to new methods and ideas would labour under a great disadvantage. The establishment of laboratories and institutions for training investigators who are fitted to implant the result of their discoveries in the minds of the farming community would be the first duty to South African agriculture of a national government. No system is sound until it is so organised as to produce the men who are to carry it on.

Such institutions would afford instruction in the higher branches of agriculture to practical farmers as well; but if the example of

the United States and Canada were followed, the agricultural colleges, where the great mass of smaller farmers are trained, would be left in the hands of provincial governments. A substantial portion of their funds, however, might be furnished by the central government in the form of grants, only to be earned by institutions which attain a certain standard of efficiency.

Agricultural journals.

The work of issuing printed information on the other hand, should all be undertaken by the central government, in close connection with its function of research. One agricultural journal would take the place of five, and the cost of this work would be reduced while its utility was increased.

5. Material aids.

The supply of material aids—sires for stock, trees for planting, advice and assistance in irrigation, and such like—might well be left to provincial authorities acquainted with the needs of their own localities. Preventative and curative sera could be manufactured by the central government and supplied to the local government at cost price for issue in retail. If the railways were run on business principles, as set forth in the last chapter, concession rates would have to be met by a vote from the local authority. This in itself would be a valuable reform from the point of view of public accounting, for the country would then be able to see what it was really spending on grants to encourage industry. The same authorities might be left to supply engineering advice and practical assistance

Irrigation.

to farmers in the finding, storage, or distribution of water. Large and expensive schemes of irrigation, however, must be left to the central government. In Australia as well as in America the construction of great storage works has been found to require legal and financial powers wider than those which provincial governments can exercise. All the largest rivers of South Africa are used as boundaries, and the storage of their waters must therefore be controlled by a national authority with jurisdiction over either bank. The existing irrigation departments have several projects in mind which require the assent of two or even three of the governments. One, which would bring an immense area under close settlement, affects the Vaal River near the point where the territories of Cape Colony, the Orange River Colony and the Transvaal meet. A second scheme affecting the Orange River could scarcely be carried out with safety so long as its waters are liable to be diverted by the governments of the Orange River Colony and Basutoland.

If the debts of South Africa are to be consolidated, it will clearly be necessary to extend the benefits of the Transvaal land bank to the rest of South Africa; for otherwise the national credit would be used to confer a special benefit on one local section of farmers as against another. A united South Africa would have no difficulty in finding capital to extend the operations of the bank.

If we are right in thinking that the public

estate should be managed by the national government, the duty of afforestation must rest with the same authority. That government should also be in a position to plant wood to supply sufficient sleepers for its railways in future years. But forestry in the hands of a national government may become the instrument of a policy far wider in its outlook than a mere improvement in the supply of timber. In Natal, the Orange River Colony, the Transvaal, Swaziland and Rhodesia, coal exists in unlimited quantities, and can be recovered as easily as in any other part of the world. So long as labour continues to be more mobile than the sources of power, industries will gravitate towards the fields where the cheapest fuel is obtained, and sooner or later a great manufacturing development may be looked for on the coal-bearing areas of the interior. Its appearance will depend on a reduction in the cost of items other than fuel, and measures taken in advance to prepare a cheap and plentiful supply of timber in the neighbourhood of the coal beds may do something to hasten it. The business of cutting the forests as they ripened would help to attract the population whose presence is essential to industrial development.

Fisheries.

Government measures for the protection of fish.

As regards the fisheries of South Africa there is little to be said. The Coast Colonies have spent money on enquiring how the

various kinds of fish can be protected, and have passed laws to give effect to the conclusions obtained. The Cape Government has also demonstrated the possibility of deep sea-fishing by the purchase of a steam trawler. As regards fresh water fish, the coast Colonies and the Transvaal have subsidised private societies for the propagation of trout in rivers, and have passed laws for their protection, chiefly with a view to the improvement of sport.

It is evident that sea fisheries and the control of rivers dividing two or more Colonies are the proper concern of a national government.

Mining.

The principal duty of the State in respect of mining to regulate the industry.

In Chapter IV. we have discussed the definition and record of mining rights. We have still to consider the activities of the State in promoting and regulating mining operations. Government assists the discovery of minerals by the collection and publication of information regarding the geological features of the country, in the form of a geological survey for the use of prospectors. In the Transvaal public money has been spent on such objects as the examination of unwholesome air in mines, the investigation of miners' phthisis or the research for an effective safety catch to reduce the danger from breaking ropes. But as we have noticed in the opening pages of this chapter, mining is for the most part in the hands of large companies who have

sufficient motive as well as means for conducting the research, and government leaves the matter to them. Its principal concern with the industry is to secure the health and safety of those employed on it. Pit ropes, boilers and machinery are examined and inspected in order to test their strength. The mines themselves are inspected with a view to securing proper sanitation and ventilation. Regulations are made and enforced in regard to the keeping and use of explosives. The government also undertakes to ascertain the fitness of persons engaged in such operations of mining as affect the safety of others, and to grant certificates of proficiency to those qualified to receive them. Where mines are being worked on Crown land it is the duty of the Government to regulate the use of water and the cutting of timber, and to see that where growing trees are cut down, fresh trees are planted. Laws are also passed regulating the sale of gold and diamonds with the object of preventing theft; and diamond mining companies are permitted by law to confine their labourers within compounds during the period of their indentures.

These functions proper for national government.

Of the work of government mentioned in the preceding paragraph there is little that can be properly undertaken by local authorities. Research so far as it is conducted at the public cost should be placed in the hands of a central government. Geological no less than geographical surveys are a matter of national

interest and might well be conducted by two divisions of a single department. There is no reason why laws for diminishing the dangers of mining should not be uniform in their terms and in the manner of their administration. It would be a great advantage indeed to the mining industry if the regulations to which it must conform, as well as the measures taken for preventing the theft of gold and diamonds, were everywhere the same.

Manufactures.

Promotion of manufactures confined to protection or bounties.

South Africa produces little if anything in the shape of manufactures for export; but a certain quantity of wine, matches, cigarettes, jam, wheeled vehicles and harness is made for home consumption. So far the assistance afforded by the government is limited to protective tariffs or bounties. Such assistance is inseparable from the fiscal system of the country as a whole. If free trade is really to exist within the frontiers of British South Africa, the power to impose protective duties or grant bounties must be reserved to the national government.

CHAPTER X.

The Line of Division Between National and Local Functions of Government.

Federal and unitary constitutions distinguished.

In the constitution of the United States, of Canada, and of Australia certain functions are appropriated to the national governments on the one hand, and to the states or provinces on the other. Some of these functions the national government, others the local government, is forbidden to touch. Lists of this kind are a necessary part of every federal constitution. They have no place in a constitution of the unified type.

Conclusions of Part II. when summarised point to adoption of unitary type by South Africa.

In Part II. an attempt has been made to arrive at similar distinctions between national and local functions in the case of South Africa. We have set ourselves to discover the primary purposes for which government exists, and to master the real significance of each, in order that we may learn what sort of administrative machine is best adapted for carrying them out. But it is not enough to consider each primary function by itself or to say that this duty must be done by a national and that by a local authority. In order to complete the enquiry the separate conclusions must be added together. They must be summarised in such a way as to enable us to see whether

the division is one, which could in practice be realised as a whole. We have therefore worked out in Statement No. XX. a scheme for the division of duties between a national government and local authorities, such as would result, if effect were given to the conclusions arrived at in previous chapters. The scheme is framed in order to give some idea of what the position would be, if the process of national union were carried to completion. It implies for instance that the local authorities would be of a type approximating to the divisional council of the Cape Colony rather than to the present colonial governments. Larger local authorities could of course be entrusted with wider functions. If, however, they are enlarged beyond a certain point, a new order of subordinate local authorities would have to be created under them, to carry out the smaller details of administration. The list must in any case be taken as a purely provisional one, and is only put in as a basis for discussion and criticism.

Statement No. XX.

More duties devolved on local bodies in proposed scheme than appears on surface.

At the first glance it may appear that the functions assigned in this summary to the national government are out of proportion to those which are left to local authorities. But the respective burdens cannot be gauged by a mere enumeration of the duties assigned to each. For example, the duties in connection with public health assigned to the national government, though filling more space on the list, would be far lighter than those delegated to local bodies. The Imperial

government has jurisdiction in matters of public health over a population six times as great as the whole population of South Africa white and coloured. Nevertheless it bears but a small fraction of the actual burden, for all the details are devolved on a host of urban and rural authorities. The administrative work retained in the hands of the central government is performed by a single office in Whitehall, and by a staff of inspectors who act as the links between the central office and the local authorities throughout the country. The legislative work only involves a periodic revision of the law, which regulates the whole vast machinery of public health. Powers of sub-legislation are assigned to and freely used by the local authorities. It will thus be seen that complete sovereignty of the national government in the matter of public health is quite consistent in practice with a thoroughly decentralised system of administration. The same principles may be applied in varying degrees to education, native affairs, the administration of pounds and brands, and to the building of roads and bridges. All these are matters which fill a far greater space in the public administration than appears on the face of a list like this.

Proposed scheme contrasted with those embodied in federal constitutions.

In one fundamental respect the list differs from those incorporated in the constitutions of the United States, Australia, and Canada. Even in the case of Canada where the Dominion government enjoys all powers not specifically reserved to the provincial govern-

ments, the former is forbidden to touch a number of functions which are grouped under seventeen different headings. For example the act says "In and for each province the Legislature may *exclusively* make laws in relation to education, subject and according to the following provisions." The functions of government in Canada are therefore divided into two classes by a vertical line, which can only be moved by a change of the constitution itself. Before the Canadian government can touch any matter which lies on the other side of this line, they must persuade the Imperial parliament to amend the British North America Act.

British North America Act, 1867, Section 93.

It is for the Courts of law to determine the exact position of the line, which thus becomes the subject of ceaseless litigation. Under a federal constitution, the question of how a function can best be performed in the public interest falls into the background. It becomes obscured by legal discussions as to whether, in terms of a contract framed long ago, it belongs to this or that authority. The great debates on slavery in America read like a dispute between lawyers. A decision of the court moreover may transfer from one authority to another the control of matters in which national interests are deeply concerned. For a time the Dominion government claimed the complete control of the fisheries of the Canadian lakes, which are great inland seas washing the shores of several provinces, on the ground that under

Under federal constitutions, questions of centralisation or devolution settled on principles of law not of expediency.

the constitution not only legislative power but all proprietary rights in respect of the great lakes were vested in the Dominion. If the question had to be decided on its merits it would seem obvious that the control of the lake fisheries was a national function; but the Privy Council decided in 1898 that in terms of the constitution while the Dominion had exclusive power to legislate as to navigation and fisheries, the proprietary rights in the lakes and in the lake fisheries, remained vested in the provinces. A large measure of the control which it was desirable to exercise over these fisheries was therefore taken away from the one authority competent to exercise it in the interests of the nation as a whole, and divided among several provincial authorities, each of which would naturally be tempted to adopt a policy based on selfish considerations.

Illustrations of dangers inherent in federal constitutions.

The danger of such hard and fast provisions lies in the fact that the distinctions between the various functions of government are really more subtle than those which we in our classifications are always endeavouring to draw between them. Apart from this, their nature is continually changing, so that divisions and classifications which were accurate enough to be useful one year, are obsolete the next. It would be difficult, for instance, to point to two functions of government which appear to be more clearly separate from one another than those of defence and public education. It would have needed a more than human sagacity on the part of the

statesmen, who framed the Canadian constitution, to have foreseen that within a few years the question of military training might have become involved with primary education. The restriction, which prevents a national government from including military training in the curriculum of the schools, might insensibly lead a nation to found its defence on a standing army instead of on a national militia. A similar instance less important, but more difficult to foresee, may be quoted from the history of the United States. In this case, certain functions only were assigned to the Federal government and all powers not so assigned were reserved to the States. Since the framing of the American Constitution, artificial manures and feeding stuffs have come to play an important part in the agricultural industry and, in order to protect the farmer against fraud, it has been found necessary for the government to prescribe that such articles shall contain certain percentages of nitrates, oils and other matters essential to their efficacy. Under the American constitution this function has to be left to the legislatures of the different States, which now number no less than forty-five, with the inevitable result that standards are fixed in different scales and in a variety of ways. The manufacturers of Chicago have therefore to turn out separate brands, in order to conform with the requirements of each different state. The effect on the price of materials which are essential to modern

farmers is inevitable. When the constitution was framed more than a century ago, it was impossible that anyone should think of contingencies like this; yet under its terms the national government is powerless to provide a remedy. In the meantime the great increase in the number of States renders it practically impossible to amend the constitution. Instances of this kind are innumerable. Each taken alone may seem unimportant; but together they form an ever increasing restraint on the movements of national life. In time they may bind a nation as the people of Lilliput bound Gulliver with threads.

Federal principle also impedes decentralisation.

The practice of reserving certain duties in the constitution to the local authorities is dangerous because it impedes uniform central action, where such is required in the public interest. But the federal principle also involves a danger of a converse kind. Division of sovereignty between the central and local authorities is the essence of federation. Each class of authority has its own work to do, and neither can lay commands on the other. In the United States for instance the regulation of weights and measures is assigned to the Federal government. But the Federal government cannot use the State governments for the purpose of administering the law. It cannot in fact use local authorities at all for the purpose, but must employ a host of inspectors throughout the breadth of its vast territory, under the direct supervision of Washington. In England, on the other hand,

the central government makes the law but it does not attempt to administer it. The multifarious duties of inspection are imposed by the law on the local authorities. Where the sovereignty of a national government is complete, its power to devolve its duties is complete also. Where on the other hand it is restricted to certain functions, it must discharge those functions for itself. It cannot devolve them on local authorities which it cannot command.

Danger of forbidding national government to legislate on any point.

Our survey, then, of the actual work of government in South Africa points to the conclusion that hard and fast vertical lines dividing national from local functions are a mistake, and that we should be rash to schedule any function as one which a national government should be forbidden to touch. In Statement No. XXI. Statement No. XXI. is appended an alphabetical list of most of the matters which have been the subject of legislation throughout South Africa. If the various items in this list are considered, few will be found in respect of which it may be said that national legislation will never be required. In every case these are so trival as to be unworthy of inclusion in a separate list.

Decentralisation required not of particular functions but of certain aspects of most functions.

The facts indeed would seem to suggest that local and national duties should be divided on an entirely different principle. We are led to think that the functions of government cannot be divided into two lists, one national and the other local. Most, if not all of these functions, have their national

aspect on the one hand and their local aspect on the other. We cannot say that the nation is solely responsible for defence and the locality for education. The true division of functions is one, which assigns to the national government such duties of administration as should be performed irrespective of internal boundaries, while delegating to local agencies all such duties as can be carried out effectively within limited areas. But an arrangement which gives each kind of work to the appropriate machine cannot be fixed for all time by the rigid provisions of a constitution. Its essential principle is adaptation to the facts, and, unless society is to stand still, the facts will change, and the methods of administration must be changed as well. The apportionment of duties must not be fixed by a document, but regulated by an intelligence, which can see the necessities of the time and meet them as they arise. That determining intelligence must necessarily be the government answerable for the national well-being as a whole.

The principle of division illustrated.

On this principle, education would be assigned neither to the central nor to the local government; but the direction of policy would be undertaken by the one and the administration of details by the other. The national government would also undertake the institution of a university, the training of teachers and any other duties which cannot be carried out with effect or economy by local authorities. The administration however of the

primary and all but the higher secondary schools would be left in the hands of the local authorities. All that is necessary for national purposes could be secured if the central government confined itself to inspecting the schools and making grants to the local authorities, which it could withhold whenever they failed to follow the prescribed curriculum and to attain the degree of efficiency required. In other words the duties assigned to each class of authority should be divided by horizontal rather than by vertical lines, and the question where these lines are to be drawn should be left to the national government to decide according to the necessities of the case from time to time.

PART III.

SECONDARY FUNCTIONS OF GOVERNMENT.

CHAPTER XI.

Initial Classification.

Secondary functions the means to the primary functions.

The ultimate objects which government exists to accomplish such as the protection of property, settlement, public health, communication, or the promotion of agriculture, have been dealt with in Part II. under the name of "primary functions." They are in a word ends in themselves. In Part III. we come to a different order of activities, which may be called secondary functions of government. These are the means to its ends. Reversing the order adopted in Part II. we propose to discuss the functions of minor importance first and then to proceed to those which are essential.

Description of secondary functions dealt with in Part II

If our purpose were to write a treatise on the theory of public administration, it would be necessary to prepare a long list of minor secondary functions. This book, however, is based on an examination of the public documents of South Africa, and we shall confine ourselves to subjects which appear on the face of those papers. The Colonial estimates shew the existence of separate establishments for dealing with public buildings, stationery, printing, the keeping of archives and the purchase and storing of goods. These mis-

cellaneous matters are disposed of in Chapter XII. The collection of public information is the subject of Chapter XIII. We then come to the secondary functions which are essential. In Chapters XIV. and XV. we discuss the raising of funds first by way of revenue, and secondly by way of loans. In Chapter XVI. the arrangement of expenditure is described.

Having seen how the duties of government are paid for, we have then to consider the machinery by which they are carried out. Some of these duties the State performs for itself through its own civil service, the organisation of which is discussed in Chapter XVII. There are other duties which the State devolves on subordinate authorities. Chapter XVIII. deals with this subject under the title of local government. In Chapter XIX. we discuss the manner in which the revenues and machinery of the four governments would be distributed, first under a federal and secondly under a unitary scheme of reconstruction. In Chapter XX. Mr. R. R. Garran shows how this process was begun and how it is still being carried on under the Australian Commonwealth.

CHAPTER XII.

Minor Secondary Functions.

The provision of offices, schools, prisons, and other public buildings is a duty which accounts for a large annual expenditure by the public works department of every government.

Public Work Department.

Secondly, there are the departments concerned with the supply of stationery and the control of printing, including the government gazettes, in which official announcements of all kinds are made. Except in the Transvaal, where the government maintains its own press, printing is invariably done by contract.

Stationery and printing.

Thirdly, there are the offices where the archives of the State are kept. In all administration it is necessary to preserve a careful record of every step taken. All the records referring to one subject are, or should be kept together. It is the duty of the archives office to relieve the working departments of the papers they no longer require, to insist on getting them, to see that superfluous records are weeded out and destroyed, and that the remaining papers are so sorted and classified as to be accessible in case of need. It should also provide calendars or summaries for the guidance of the future historian; for public records are the principal material of modern history.

State archives.

These functions incidental to all administration.

No question, however, arises as to whether these secondary functions are proper for national or local governments. Accommodation, stationery, printing and records are necessary for both.

Government buying: (1) through tender boards.

(2) through agents-general.

Another secondary function is that of buying articles required for government use. Purchases in South Africa are made so far as possible through tender boards. Goods imported directly by the colonial governments are bought through the agents-general. In the case of the protectorates the work is done by the Crown Agents for the Colonies. The multiplication of these offices in London involves a serious waste of money to the people of South Africa. In the earlier days of colonial self-government the functions of an agent-general were chiefly to buy the goods imported by his government and to negotiate loans, matters in which money can be saved by knowledge and skill. The agent-general is also expected nowadays to push the sale of colonial products. A business undertaking would only entrust such duties to a man who had long experience in commerce and finance. But of recent years there has been a tendency to elevate the agent-general to the position of an ambassador, accredited to represent his colony at the seat of the Imperial government. Increasing use is made of him as a channel of intercourse between the Imperial government and the colonial ministry, and in the choice of an agent-general his diplomatic qualifications are often considered first. But

one man seldom combines the knowledge of a professional buyer with the knowledge of public affairs and the personal gifts required by a diplomat. If, however, South Africa were represented in London by one establishment instead of four, she could easily afford to separate the diplomatic from the commercial duties. The office of agent-general would then be entrusted to an experienced statesman who would leave the purchasing of stores and the raising of loans to a highly paid and properly qualified commercial adviser. The Cape government indeed has already appointed a special agent to open a market for colonial fruit. Local authorities might use the same office just as the protectorates at present use the Crown Agents. The handling of a large amount of business through one office would strengthen the hands of the South African government in dealing with the shipping companies.

Stores.

In discussing the railway and postal organisations we have noted the economies in the cost of stores which centralised management might effect. The same considerations apply to the goods required by all other departments. Savings on a large scale could be made by bringing the buying, keeping and distribution of public stores in South Africa under one control.

CHAPTER XIII

Information.

CHAP. XIII.

Administration of all kinds based on accurate record and comparison of relative facts.

No one can have followed the account of the functions of government already given without feeling how complicated and scientific its business is, even in a new country with a small population. Great issues hang upon the judgment of those who guide its policy just as the safety of a ship depends upon the navigating officer. The captain does not guide his ship by guess work or by intuition. He is always accumulating data and working out results. The daily run is measured, not merely by a log dragged through the water, but by the number of revolutions made by the screw. Allowance is made for the known direction and force of currents, and the dead reckoning thus obtained is checked by observations as to the position of the sun. Even so, fogs, storms, unknown currents or icebergs may defeat the most careful navigator and wreck the ship. All the facts necessary to ensure its safety are not susceptible of accurate record and measurement; but the margin of risk can be reduced by recording and working out with care all those that are. But when this has been done, there is still room enough for nerve and intuitive skill on the part of the captain. The navigation of a ship is a good example of scientific admin-

istration. A bank, a railway, an army, a mining group, must each be equipped with an intelligence department whose duty it is to collect and tabulate facts and figures (which are merely the most concentrated expression of facts) and to deduce correct conclusions from them.

This should be done for governments by statistical offices. Need of such work in South Africa.

Much of the information upon which governments act should be prepared for them in the same way by their statistical offices. As in the navigation of a ship nothing should be left to guess work that can be discovered by accurate observation and the comparison of measured results, so it should be in matters of state. The policy of government ought to be based so far as is possible on information collected and prepared on the most scientific lines. In Chapter VI. we have shewn that the question whether South Africa is to become the inheritance of the higher or lower races of mankind, is one which government policy may determine in the next hundred years. At present the simplest facts necessary as a basis for correct conclusions are in dispute. Is the industrial system now accepted in South Africa leading to the substitution of coloured for European labour, or is it not? To answer that question, government should have at its disposal continuous, accurate and carefully framed information from a number of different departments. Periodic reports and returns would be required from magistrates, immigration officers, mining inspectors, agricultural experts and native commissioners.

Each department has a human weakness for facts and figures interesting from its own departmental point of view. But it cannot always know of itself what data are required as a basis for the wider calculations of government. A government statistician is an expert who acquaints himself with the problems which the government as a whole is endeavouring to solve and instructs the different departments to record such data as will enable him to place before it a correct view of the facts involved.

Waste involved in keeping and publishing useless figures.

The trade and shipping statistics of South Africa are prepared and published by the statistical bureau of the customs union. The careful preparation and issue of these figures is indeed not the least of the benefits which the union secures. Masses of figures relating to other administrative matters are published by the various governments at considerable expense, much of which is wasted for lack of scientific selection, arrangement and co-ordination. In the absence moreover of experienced criticism and inspection it is impossible to say how far the figures are properly kept or what reservations must be made in using them. A government statistician should be vested with authority to see that returns prepared by the various departments are not only useful but also accurate; for false information is worse than none at all.

One expert statistician could do all that is required in South Africa.

The cost of a really qualified statistician might perhaps be met in the larger colonies from the economies he would effect in clerical

work and printing. But on any colonial budget his salary might be thought pretentious and out of scale, and indeed one such office could do all that is required for the whole of South Africa. The work of the statistical bureau in Washington shows how valuable a service may be rendered to local authorities, as well as to the national government, by a central office of this kind. The South African colonies, which are simply provinces parading as nations, cannot hope to provide the appliances proper to a national government.

Government commissions, their use and abuse.

The lack of any organised provision for collecting and digesting information is accountable, in some measure, for the numerous commissions of recent years. In the Transvaal alone the commissions appointed since responsible government was established have cost £12,700 exclusive of printing and stationery. The total cost including these items must be over £20,000. As instruments of enquiry, commissions are subject to this defect, that as soon as they have reported, they disappear. It often happens that no one remains in government circles who is interested in seeing that effect is given to their recommendations. No student can record the whole fruits of research in documentary form, and when, as usually happens, the commissioners are not civil servants, their continued advice is not at the immediate disposal of government. An enquiry

by commission usually proceeds by taking evidence from witnesses by word of mouth. It is therefore a useful agency where the opinion of the public as well as of the government requires to be formed, provided that it does not neglect, as sometimes happens in South Africa, to set forth the reasons upon which its conclusions are based. The appointment of too many commissions, indeed, tends to produce a slipshod style of report. Many of the most important subjects submitted to commissions, such as irrigation, indigency, customs and native affairs, are South African rather than local in scope. A commission in these cases can do the work better for the whole country than it can for one locality.

Parliamentary Committees, their limitations.

Another instrument of enquiry is the parliamentary committee, which ought properly to be used by parliament for obtaining information on points arising from the bills, estimates and other business immediately before it. A parliamentary committee is subject to two limitations which do not affect a government commission. No one but members of parliament can sit upon such a committee, and its work, in all but exceptional cases, must begin and end with one session. For this reason parliamentary committees should only be used for their proper objects, the investigation of matters upon which parliament requires to be advised in the course of the session.

CHAPTER XIV.

Revenue.

Statement No. XXII. contains a comparative account of all the sources from which the income of the four self-governing colonies is drawn. Some of these revenues are derived from public property in the hands of the government, such as land, buildings, or money put out at interest. A second class of revenue is derived from the payments that government requires for services which it renders. The best examples are those offered by post offices and railways. These two classes of revenue are such as a private corporation might enjoy and their amount is primarily determined by the cost or value of the special services rendered. Fines, forfeitures, escheats and similar windfalls are a third though minor source of public income. The fourth and most important source is taxation. The method of collecting these taxes is shown in Statement XXIII. The amount which can be raised by forced contribution is primarily determined by the needs of the government and ultimately by the taxable capacity of the people.

Sources of revenue classified.

Statement No. XXII.

(1) Public assets.

(2) Payment for services rendered.

(3) Fines and forfeitures.

(4) Taxes.

Statement No. XXIII.

Principal object of enquiry to distinguish local from national revenues. Question answered in respect of first three classes of revenue.

Our immediate object is to afford the reader the means of deciding what are the sources from which the national government should derive its revenues, and what other sources could properly be assigned to the needs of local administration. So far as the first two classes of revenue are concerned—those derived from public property or from services rendered—the answer is obvious. Such income must accrue to the authority which holds the property or which conducts the service in question. Monies derived from the rent or sale of property, from interest on loans, and from services rendered by the railways, posts, telegraphs and telephones may therefore be dismissed from further consideration. We have already provided the material for answering the questions which arise in respect of such revenue in Chapter VIII. which dealt with the question whether these properties and services should be placed in the hands of the national government or of local authorities. Fines and forfeitures should properly go to the authority principally concerned in enforcing the law under which they are imposed. The local authorities, for instance, should have the benefit of fines imposed for breach of public health laws, for the enforcement of which the state has made them responsible.

Taxes classified for purposes of discussion.

There remain the taxes imposed by statutes enacted by the various colonial legislatures. These may be grouped under the following heads:—

Customs.
Excise.
Income tax.
Succession duty (*i.e.*, a duty on the transfer of property on death).
Poll tax.
Native taxes.
Mining revenue.
Stamps.
Licenses.
Transfer duty (*i.e.*, a duty on the transfer of fixed property *inter vivos*).
Land taxes.

Customs the only uniform tax.

The customs duties are the only tax imposed on a uniform scale and collected in a uniform manner, throughout the four self-governing colonies. They yield at present 37·9 per cent. of the income of the four colonies, excluding any revenue from railways, ports and harbours. The whole of British South Africa, with the exception of North-eastern Rhodesia and Nyasaland, is at present included in what is known as the customs union. This means that all the governments concerned have agreed to adopt certain tariffs and that their legislatures have ratified this agreement by passing identical legislation for the purpose. Although Southern and North-western Rhodesia are included in the union, they have no power to impose higher duties than were levied in the Cape Colony at the time when the British South Africa Company received its charter. They have therefore to allow

rebates from the duties imposed under the present union tariff.

Working of customs union described.

This union while it lasts, secures internal free trade; though some colonies still manage to secure an illegitimate species of protection for their own products by according them differential rates on their railways. Under the customs convention, dues paid on goods cleared at the ports but consigned to an inland colony are collected by the coast governments on behalf of the inland governments for a charge of 5 per cent. The importer has the option of clearing his goods, either at the ports, or at some inland customs house, and as a matter of fact a large proportion of the customs is still collected inland. It must not be inferred, however, that the revenue when collected, is pooled; for each colony is entitled to the duty on goods consumed within its own borders, just as it would be if no convention existed. An elaborate and expensive machinery has therefore to be maintained in order to ensure that the duty paid in one colony on goods which are afterwards transported elsewhere, is credited to the government within whose jurisdiction they are finally consumed. When goods are despatched by rail from one colony to another, whether they consist of colonial or imported produce, the transaction is subject to a complicated system of record and advice. Duplicate forms must be filled in, and one set of copies serves for the consignor, while another set is supplied to the customs bureau.

This is an office at Cape Town jointly controlled by the directors of customs of the various colonies, which costs some £20,000 a year. Its principal function is to trace the movement of goods from colony to colony, by means of the returns supplied to it, and to credit the revenue yielded by each consignment to the government within whose territory it is finally consumed. This is the reason why travellers from abroad who have submitted to customs inspection at Cape Town or Durban , find with surprise that they have still to undergo a second inspection on arrival in the Transvaal.

Faults and merits of the system.

The union is in fact a make-shift with many defects. Some colonies are more in need of revenue than others; but whether a colony has a surplus or a deficit, it cannot adjust its principal source of revenue to redress the balance. The union moreover is very unstable; for any one of the parties to the agreement may withdraw from it, on giving twelve months notice, and when one of them gives notice, all the others have practically no option but to reconsider the whole arrangement. The union therefore can never count on having more than twelve months life before it, a very slight security to merchants and manufacturers who are anxious to know what the fiscal conditions will be before they risk their capital. With all its defects, however, the union has this merit that, so long as it stands, it prevents the existing governments from embarking on a

policy of commercial hostility towards one another. Without it, all the colonies must have plunged into an internecine war of tariffs and rates, in which, sooner or later, the Imperial government must have been called upon to intervene. The existence of the union, at the moment when South Africa is establishing a national government, places her in a position of marked advantage, compared with America, Canada, and Australia, at similar crises of their history. It means that the national government when it begins its career will find the most important part of the public revenue, already raised in a uniform manner.

Excise.

The next item on the list of revenues is the excise levied on articles produced in South Africa. Beer and spirits are at present the only articles subject to this tax. Excise duties are so closely connected with the customs that they should clearly be fixed and collected by the same authority. If local authorities were able to fix the excise, they would also need to have power to charge duties on products imported from other areas; but this would impair the fiscal unity of South Africa. It may be objected, however, that the excise might be fixed on a uniform basis by the national government and the collection left to local authorities. But in order to distribute the tax properly, it must be levied on consumption and not on manufacture. A system would therefore have to be established, like that which exists at pre-

sent under the customs union, for ensuring that the tax should be paid where the beer or other article subject to excise was consumed. The local authorities in fact would have to maintain some customs machinery of their own. All these considerations point to the nationalisation of the excise.

Other taxes. Their diversity.

A study of the analysis of this and of the other taxes tabulated in Statement No. XXII. will serve to emphasize the conclusions arrived at in Chapter IV. as to the results which follow, when a number of independent legislatures endeavour to effect the same purpose. They end by effecting it in different degrees and in extremely different ways. In spite of a certain similarity in the taxes, partly attributable to history, partly to imitation of the nearest example, there is little uniformity either in the burdens imposed or in the manner of their imposition. It is safe to predict that, whatever taxes are allocated to the purposes of a national government, they will require to be remodelled on a uniform basis as soon as possible. The question which of these taxes should be fixed and collected by the national government and which by the local authorities, is far too difficult for off-hand settlement. Before an authoritative answer could be given, it would be necessary to undertake a laborious investigation into the principles of taxation on the one hand and of local conditions on the other. All that can be attempted in a work like the present is to hazard a few conclusions and leave the reader to consider how far they are valid.

Income tax.

In South Africa the income tax is peculiar to the Cape Colony; but sooner or later a united South Africa is certain to turn to this source of revenue. An income tax is most unsuitable as a source of revenue for a local authority, on account of the difficulty of deciding where the income of each individual should be taxed. Any attempt to do so would in many cases give rise to over-lapping on the one hand and to waste on the other. The settlement of the tax-payer's domicile would be certain to involve costly litigation. An income tax must therefore be regarded as a source of revenue proper to the national government.

Poll tax.

Similar reasons apply in the case of a poll-tax. If levied by local authorities there will be constant disputes as to where the tax-payer is domiciled, and the cost and worry of efficient collection would be out of proportion to the value of the tax. These objections, however, apply with less force to a native population, in so far as their domicile is determined by a system of travelling passes.

Succession duty.

The same argument applies in the case of succession duty. Apart from these reasons, however, any form of succession duty would be an unsuitable tax for a local body to impose, because in a small community its annual yield would be most uncertain.

Native pass fees.

Native pass fees should of course be levied by the authority entrusted with the administration of the pass system. In Chapter VI. we have seen that the strongest of all reasons

for South African union is the need of some government competent to exercise a general control over native policy. It does not follow however, that a national government might not delegate certain departments of native administration to local authorities, retaining always the right to modify or withdraw the powers delegated. Even as things are, colonial governments delegate to municipalities power to regulate locations and to administer the pass system within their own areas. Together with the powers the national government might also delegate a certain proportion of the native revenue. But it would probably find it necessary to confine the imposition of the local taxes within certain specified limits, in order to remedy the extreme inequality in native taxation which at present occurs between one colony and another.

Mining revenue

The next item is mining revenue, which cannot in practice be separated from mining administration. It can scarcely be to the advantage of this country that the conditions, under which mining enterprise is to develop in the future, should differ radically in principle as well as in detail, on different sides of certain artificial boundaries. If the administration be nationalised, so also must the licenses and fees which pertain to it. But these are of small importance compared with the power of taxing the profits of the industry which should certainly rest in the hands of the national, and not of the provincial, governments. In the Transvaal at

any rate the state has asserted the right to draw large revenues from profits earned from the mining of precious metals and precious stones. The discovery of a rich diamond mine or gold bearing reef would yield revenue out of all proportion to the needs of a local authority. The public benefit derived from minerals should clearly accrue to the nation at large, and not to the inhabitants of any limited area in which they chance to be found. This principle was indeed recognised, when all mining values in the Transvaal were exempted from local rates. To assimilate the taxes now levied by the different governments on existing properties is out of the question. It might even be well if the constitution were to fix the taxes on ground already proclaimed for mining at their present level in order to promote the feeling that South Africa is a country where vested interests are studiously respected. On the other hand it would be advisable to bring the development and taxation of all future mining enterprises under a uniform law.

Stamps. The next head of revenue is the taxes on bills of exchange, deeds, and other legal instruments, which to be valid, require to be stamped to the amount of the duty prescribed by law. No argument is needed to show that such laws should be uniform and that stamps should be issued by a central authority.

Other taxes. The only important sources of revenue which still remain are the imposts on fixed property, that is to say, transfer duty, land

taxes, and such licenses as are incidental to whatever functions might be assigned to local authorities. Amongst these may be included licenses for the retail sale of liquor and shop licenses for retail trade. All these are taxes which may be localised; but in order to understand why this is so, it is necessary to consider the principles which govern the levying of compulsory contributions by the state.

Division of national from local taxes depends on first principles of taxation.

Each member of society has a number of wants, and there are agents of two kinds for satisfying those wants. One is private enterprise, the other is the state. The supply of bread, for instance, is left to bakers, and the cost of producing it is met by the consumers, who each pay a certain price for every pound of bread consumed. The great merit of this system is that it imposes a self-acting check on waste, and for this reason the state charges on the same principle, so far as it can, as for instance in the case of the post office. But there are certain services, such as military and police protection, which cannot be rendered separately to each individual citizen, but only to the community as a whole. It follows that such services cannot be wasted by the private consumer, nor can they be withheld from him in default of payment. Services of this kind for which it is not possible to exact payment for value received are the primary business of the state. Most government work is indeed of this nature, but the state as well as the baker must have money to pay for the work it does, and in so far as it

Equality of sacrifice proper basis for distributing taxation.

cannot depend on voluntary payment for services rendered, it must resort to compulsion and oblige the citizens to contribute the necessary funds. As it cannot charge this forced contribution according to the benefit received, it should treat the taxpayer on the same principle as a driver treats a team of pack animals. In distributing the load the driver recognises that, while all his team are to travel the same distance at the same pace, some of the animals are weaker than others. His object therefore is to equalise the strains and not the loads; for if he were to impose the same burden on each, the weaker animals would be exhausted before the stronger and stop the progress of the whole team. Acting on the same principle the state will endeavour to equalise not the amounts contributed by the taxpayers, but the sacrifice involved to each by the contribution. It will not exact a fixed amount or even a fixed proportion of each man's means, recognising that a deduction of a tithe or a quarter from all incomes, involves a heavier sacrifice for the poor than the rich. Its aim will be to attain equality of sacrifice so far as is possible. Were it not for the difficulty of assessing the incomes of the poorer classes, and of collecting direct taxes from them, a carefully graduated income tax might perhaps be regarded as the ideal form of compulsory contribution.

Localisation of taxes a safeguard against fiscal injustice.

The practice of charging individuals irrespective of the benefit received necessarily means the distribution of benefits irrespective

of the charge exacted. A principle like this is always open to abuse, and is only to be justified in so far as the community would suffer as a whole if it were not applied.

The safest course is always to insist on the principle of allocating burdens, so far as is possible, according to the benefit conferred. It often happens that the benefit of some public service, which cannot be appropriated to individual citizens, can still be appropriated to local communities and charged to them. This localisation of public charges is obviously a step in the right direction. For the inhabitants of towns, for instance, protection from fire is at once more necessary and more easily rendered as a public service, than for people who live in country houses. Farmers ought not to be called upon to pay for municipal fire brigades which can render them no assistance in case of need. The charge is one that every town should meet for itself. A town council, however, is faced by the same difficulty as the central government. It cannot apportion the cost of the fire brigade amongst the citizens according to the benefit it confers on each. It has therefore to meet the cost by forced contribution levied on the citizens according to the ability of every man to bear the charge. Individual wealth is therefore subject to forced contributions of two kinds. The citizen must bear local as well as national taxation, and both should be levied in proportion to his means.

But here we are at once met by a difficulty.

Fixed property the only measure of local obligation.

A citizen can belong to one state only; but he may live, do business, or own property in a number of different local areas. If each of these areas were allowed to tax him on the basis of his total property, the citizen with scattered interests would contribute far more than one who concentrated his interests in one locality. There would in consequence be no real equality of sacrifice. A graduated income tax, however ideal for national purposes, would, if employed for local taxation, drive taxpayers to confine their interests to one place. It would impose a serious restraint on the freedom of the person as well as of trade. Some working rule has therefore to be found, which will enable each local authority to tax the citizen only on the part of his property corresponding to his interest in its own area. The best working plan is, like most of the methods of government, a rough one. It consists in taking as the measure of a man's liability to contribute to the local authority so much of his property as can be localised in its area. This means in practice that the value of his fixed property must be taken as the measure of his local contribution, because this is the only kind of property whose local habitation can always be ascertained. Land and the fixtures upon it must therefore be regarded as the proper subject for local taxation.

Defects in the present system of property taxes.

It cannot be said, however, that property taxes are assessed at present on any rational basis. The so-called farm and erf taxes are

not taxes at all, but quit rents charged irrespective of the value of the land. In any case they are insignificant in amount. Transfer duty is simply a tax on the conveyance of land, and a clog on its free development. All these taxes should be swept away. A property tax on the ownership of land, assessed according to its value, might then be introduced as the basis of local taxation.

Why property taxes are unsuitable for national purposes.

Before we leave this subject it may be as well to mention one reason why taxes levied on the value of fixed property are unsuitable for national purposes, in a country of wide extent. The larger the area to be assessed, the more difficult it is to effect an even assessment. Obviously it would be easier to prepare an even valuation of all the land in the Oudtshoorn district than in British South Africa. The knowledge of land values is to a great extent the knowledge of local men. In each district there are valuers who could make an accurate assessment of every farm included in this area. We may be sure, however, that there is no one at present in South Africa who could be trusted to value the land from the Cape to Tanganyika, and bring each district into proper relation with a common standard of assessment. In countries like France, India, and Egypt, where property taxes are levied for national purposes, an attempt is made to overcome the difficulty by entrusting the valuation to a department of officers specially trained, like excisemen or

customs officers, whose duty it is to maintain a constant process of revision.

Local bodies when used as agents for the performance of national duties must be subsidised from national funds.

It must not be inferred from the arguments adduced in these pages that fiscal justice is the only reason for entrusting public duties to local authorities. They, no less than the civil service, are agents of the national government, and they ought to undertake whatever duties can be better administered by them than by government departments, even though the proper performance of such duties is of interest to the nation at large. Education, for instance, is a national as well as a local interest. It must not be assumed therefore, that the whole cost of all duties undertaken by local authorities, should be met from local taxation. The state must be expected to provide for part of the cost of the duties imposed on local authorities, from the general revenues of the country. But government has not the same hold over local authorities as over their own servants, and, whenever it entrusts the former with the spending of its money, it finds it difficult to enforce economy. A local body so long as its funds are drawn from national sources, has a direct financial interest in spending as much as possible in its own area. Unless some checks on extravagance are established the spending of national money through local authorities may prove one of the shortest paths that a nation can take to bankruptcy. An arrangement, of which the pound for pound system is the commonest type, affords the most

effective check, because it provides that whatever a local authority does, a certain proportion of the cost incurred must be taken from the pockets of its own electors. Another safeguard is for government to retain the right to inspect the work done by the local body and to withhold its contribution in whole or in part unless it is satisfied with the results attained. A third expedient is the audit of local accounts by the state.

Conclusions summarised.

It would seem therefore that while fixed property should be reserved for local taxation, revenues derived from it must be largely augmented by grants from national funds. Such grants, however, should be made in some fixed and uniform proportion to the revenues raised by each local authority for itself, and the national government should have power to withhold them, wherever it finds evidence of waste or neglect.

Evil results of faulty taxation.

"Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury." In seeking a principle of division between national and local sources of revenue this famous canon of taxation must always be borne in mind. If no account be taken of injustice to classes, worry to individuals, expense to the state or hindrance to business, almost any tax can be collected in any kind of area. In the German Empire, for instance, the income tax is appropriated to the states, in disregard of all such considera-

tions. Even so, South Africa may divide her revenues between the central and local governments in whatever manner she chooses, but always at a cost; and that cost will be none the less heavy because it will continue to be paid unseen.

Need in South Africa of a uniform system.

At the present juncture it is all important to realise how a faulty system of taxation encourages public extravagance on the one hand while retarding private industry on the other. It is a double clog on the development of national wealth, and it is impossible to survey the medley of taxes in South Africa without perceiving the urgent need for reform. Under no conceivable form of union can the present taxes remain as they are. Of necessity they must be revised, and this we may count as one of the certain benefits that a reconstruction of South African government will bring. Taxes must always be burdens but they need not be fetters, and the opportunity is before us of so adjusting the load as to impede as little as possible the productive industry of the people.

Such reforms should not be attempted in the constitution, but left to a subsequent commission to work out.

To do this requires not only a profound knowledge of the principles of taxation, but also a careful study of the local, as well as of the general conditions of the country. It is in fact a task which demands some years of research on the part of a commission appointed for the purpose, and not one which should be undertaken by the National Convention, appointed to draft the constitution. If any system of taxation is fixed on the

country by the constitution, sooner or later it is certain to end as it has in Germany, by becoming a millstone round the neck of the national government. It would be wise therefore to effect some provisional working arrangement, by means of which the government of a united South Africa could be carried on for the first few years. The constitution itself might provide for the appointment of a carefully chosen commission to investigate the whole system of taxation and to prepare a scheme for submission to the national government and parliament.

CHAPTER XV.

Debt.

CHAP. XV.

Principle underlying State borrowing.

Some of the costlier works and duties required for the public convenience or safety continue to benefit the community long after they have been finished. A bridge or barrack built in two years may last fifty. The State profits for all time by measures, such as the repulse of armed invasion, which are necessary to preserve its very existence. In former times resort was had to a variety of shifts to meet these exigencies. Special contributions called liturgies were imposed by the democracy of Athens on wealthy citizens who were obliged to furnish a ship or a regiment in time of war. Benevolences or forced gifts were exacted from the rich by mediæval kings. Both were measures calculated to arrest the growth of enterprise by creating a sense of insecurity. The practice of hoarding favoured by eastern monarchs is a burying of national talents in the earth. When a modern state however has charges to meet in excess of its current revenue it borrows the money, and if it borrows with prudence occasions the minimum of disturbance or hindrance to trade. Public borrowing is in fact a contrivance for spreading the incidence of a particular expenditure over an extended period of

time, and thereby charging individuals for the benefits they receive as they receive them, that is to say, for attaining a more correct incidence of taxation.

Non-remunerative and remunerative debts distinguished.

Debts incurred in respect of such works as bridges or public buildings, or for the purpose of defence may be classed as non-remunerative. On the other hand the State may wish to construct or acquire harbours, railways, irrigation schemes or other large undertakings such as may be expected to yield sufficient revenue to meet the interest on the capital involved and maintain its value. Debts of this character may be classed as remunerative.

Normal security offered for public loans.

As loans are anticipated revenue, they can only be raised by an Act of Parliament. Such Acts as a rule authorise the government to raise loans of a certain amount and to apply them to certain purposes specified in a schedule. The government is likewise ordered to set apart from the general revenues of the colony so much money as is needed to meet the interest on the loan from time to time, and in some cases for contributions to a sinking fund in addition.

Special security sometimes offered as well.

Sometimes, however, a particular as well as a general security is offered. The loan raised for the joint service of the Transvaal and Orange River Colony in 1903 is a case in point. The loan in this instance was charged specifically on the revenues and assets of the Transvaal by an Act of the Transvaal legislature. As, however, the loan was also to be raised for the service of the Orange River Colony, the net revenue from the whole of the Central South

African Railways was allocated to meet the loan charges. This was done by order-in-council because the Transvaal legislature had no jurisdiction over that part of the railways which lay within the jurisdiction of the government of the Orange River Colony. This complicated and unusual procedure was of course due to the fact that the loan was raised subject to the guarantee of the Imperial government. For the same reason the interest and sinking fund of the loan were made a preferent charge on the revenues of the colony as against charges for any subsequent loans. But whether the Act does or does not specify particular assets on which the loan is charged, the security to which the lender looks, in fact, is the capacity and willingness of the community to pay taxes.

Obligation of State to its creditors moral rather than legal.

When a private person or corporation borrows money, the transaction takes the form of a contract entered into by debtor and creditor in accordance with the statute or common law of some state. In the event of default the creditor can call upon the government of that state to put him in possession, if necessary by force, of so much of the debtor's property as is necessary to satisfy his claim. It is therefore a legal obligation in the proper sense of the term. The relation of a sovereign State to its creditors is somewhat different, for in this case the creditor lends his money simply on the faith of the law ordering the government to pay the interest, and in some cases to repay the capital, within a certain period. If the legislature were to repeal that law, or if the government with the

connivance of the legislature, neglected to meet the charges, no legal machinery exists whereby the creditor can enforce his claim. It cannot, therefore, be called a legal claim in the strict sense of the word, because the term "legal" always implies the existence of some superior sovereignty competent to enforce the obligation on the parties involved. The obligation of a State, therefore, to meet its liabilities is not a legal debt, but a debt of honour. It has always to remember that because society cannot enforce debts of honour, it visits defaulting debtors with the heaviest penalties. The individual who repudiates a debt of honour is punished with social ostracism, and a State, which repudiates its debts, with financial ostracism. In the case of a legal transaction the letter of the contract is all important, and cannot be changed except with the consent of both parties. The form of a State debt, like the form of any other debt of honour, can be changed at will by the debtor, and for this very reason the spirit of the transaction is all important. If the debtor in any way alters the form he must be scrupulously careful to do it in such a way as will satisfy the whole world that the substantial rights of the creditor are maintained.

The form of security changed in the case of Canada.

These principles are of such importance that it may be well to illustrate them by an historical example. Before union the Canadian provinces had each raised loans, the interest on which was charged on their several revenues. By the Act of union a great part of those

revenues were transferred to a new government, that of the Dominion, without the consent of the bondholders; for in the nature of the case their unanimous consent could not be obtained. By Act of the Imperial parliament, passed at the instance of the Canadian provinces, these debts were charged on the revenues of the new government. The letter of the obligation was freely altered at the will of the debtors. But no one hinted that the slightest departure had been made from the spirit of the original obligation, because everyone recognised that the bondholders had been given a better security than they enjoyed before. It is important to note that the sanction of the Imperial government afforded the bondholders the best possible guarantee that nothing had been done to impair their rights. Such changes in the form of public obligations are more safe and more easy to effect in the colonies of the British Empire than in independent states, because they require the sanction of the Imperial government, whose authority in such a matter the bondholders would regard as beyond suspicion of bias.

Right of further borrowing on equal terms usually retained.

Another very general characteristic of State loans remains to be noticed. When governments borrow they seldom pledge themselves not to borrow more until the debt has been repaid, though they sometimes, as in the case of the Transvaal, give the lenders a preference over subsequent loans. Usually the government retains an indefinite right to borrow more and to place future lenders on the same terms as its existing creditors.

Terms and methods of repayment.

In raising a loan the government must specify whether it retains the right or undertakes the obligation to repay the capital, and if so, under what conditions and after what periods such payments can be made or claimed. If no such right or obligation is specified, the loan takes the form of a perpetual annuity which cannot be redeemed except by agreement between the creditor and the debtor. A debt like this, in fact, can only be wiped out by purchasing the stock at its market price. Generally, however, the government retains the right to redeem the stock at par, after a certain date, but does not give the bondholder the right to claim repayment. Sometimes it is provided that the government shall have the right to pay and the bondholder to be repaid on the same date. Usually, however, the right of the government to redeem the stock begins at one date and the right of the bondholder to claim repayment at a later date. Government has then a period of years within which to find the cash for redemption, and need not be forced to raise it at a time when money is dear.

Sinking funds.

It sometimes happens, however, that before the moment for redemption arrives, the loan may have been wiped out in whole or in part by means of a sinking fund. A sinking fund means monies set apart from time to time for the purpose of wiping out the debt. These monies may be invested in securities, so that the government will have assets to sell when the date of redemption arrives. The more usual plan, however, is to use the sinking fund

for purchasing the stock to be redeemed in the open market. This, under normal conditions, is the best way of wiping out a public debt, because the presence in the market of a government as a large and steady buyer of its own stock helps to maintain its saleable value, and that value determines the rate at which it can raise further loans if it wishes to do so. It is for this reason that sinking funds are often prescribed in the Act authorising the loan. For example, the Act authorising the loan of thirty-five millions for the Transvaal and Orange River Colony, requires that one per cent. of the total amount of the loan should be paid annually by the government to trustees as a sinking fund and invested, if possible, in the stock itself. Frequently, however, a sinking fund is provided by a general Act prescribing that a certain sum of money shall be set apart annually for the liquidation of debts to which no special sinking fund applies. Such Acts usually authorise the government to employ any surplus or other windfalls which may be realised, for the purpose of a sinking fund.

South African debts.

The debts of the four self-governing colonies may now be examined in the light of these remarks. A detailed account of them will be found in the tables included in Statement No. XXIV. From this it will be seen that on December 31st, 1907, the aggregate debt of the colonies was in the neighbourhood of £108,000,000, of which at least two-thirds had been spent on remunerative undertakings, such as railways, harbours, and telegraphs. Only

one-third, or roughly speaking £35,000,000 can be said to be unremunerative debt (which is not to be confused with unproductive debt). These debts, remunerative and otherwise, include from forty to fifty different classes of stock, liable to interest at rates varying from three to five per cent. Five of the debts incurred by the Cape Colony, amounting to a little more than £1,000,000 in all, are perpetual annuities. The remainder are all redeemable, and some of them subject to special sinking funds.

Processes of consolidation and conversion distinguished.

If these multifarious debts were consolidated in the hands of a central government, it might then proceed to consider how far it would be possible to reduce the burden by paying off some of the stocks with money borrowed at a lower rate of interest, and how far the debt could be simplified by reducing the number of different stocks. This and kindred operations are described by the name of conversion; and throughout this discussion we must never allow the two operations of consolidation and conversion to become confused in our minds.

Consolidation.

If the numerous South African stocks were consolidated in the hands of a central government, minor economies in administration would be effected at once. But as the dates for redemption fell due, more substantial advantages would result. By reference to Statement No. XXIV. it will be seen that the largest outstanding loan of the Cape Colony, amounting to £9,705,678, and the largest loan contracted by Natal, amounting to £6,000,000, both be-

come redeemable in the year 1929, and must both be redeemed by the year 1949. In an able memorandum on the Australian debts, Mr. Coghlan, the Agent-General for New South Wales, remarks: "As there is always a tendency to postpone the redemption as long as possible, in the end the fixing of a maximum as well as a minimum date usually means that the more remote becomes that predetermined for redemption. . . ."

Memorandum on transference State debts to the Commonwealth, ordered to be printed by the parliament of the Commonwealth, 22nd June, 1906.

It might easily happen, therefore, that in the year 1949 the Cape Colony and Natal might find themselves competing in the London market for nine millions and six millions respectively, which they might be forced to raise on any terms that might be exacted from them. It would be an obvious advantage to the South African taxpayer if the duty of the raising of loans required for redemption were in the hands of one government instead of four. Consolidation would also benefit South Africa if the credit of the central government were better than that of the four separate colonies. Here again we may quote the opinion of Mr. Coghlan with reference to the analogous case of the Australian Commonwealth:

"It has been thought right to make this dis-
"cursion into a matter somewhat polemical in
"order to explain why it is that under present
"conditions, if the Commonwealth were to take
"the place of the various states in the London
"loan market, it would probably not be able
"at first to obtain money on better terms than
"the states could do for themselves. Some of

"the leading brokers who deal with Aus-
"tralian stocks in this country—men of wide
"knowledge of financial conditions—have been
"consulted in this matter, and their views are
"in agreement with those herein expressed,
"which have been formed from independent
"observation; but they also say that in the
"course of time the Commonwealth will un-
"doubtedly stand in a superior position to that
"of any of the states, provided that the con-
"fidence of the investor in the policy of the gov-
"ernment remains unimpaired. . . ."

Conversion.

In 1888 Mr. Goschen was advised by the leading bankers and stockbrokers of London that one large uniform stock would be more freely bought and sold than a number of small ones, and the fact that a stock is easily marketable tends to maintain its value. If therefore the credit of the central government were only as good as that of the separate colonies, it could still do something to improve that credit by converting the various debts as they become redeemable into one uniform South African stock. If, however, in the course of years a central government were able to borrow money at rates lower than those payable on existing stocks which have become redeemable, it might then, like Mr. Goschen, repay the bondholders either in cash or in stock at a lower rate of interest. Consolidation would render possible the gradual conversion of the multifarious colonial stocks into one uniform South African stock, which would probably stand in the market at a better figure and bear a lower average rate of interest.

Possible objections to consolidation.

As we have shewn, the debts of the State are not legal debts in the proper sense of the term, but can only be regarded as debts of honour. Although there can from the nature of the case be no legal obstacle to consolidation of South African debts, we have yet to consider whether any injury would be inflicted thereby on any class of stockholders. For the moment the inland colonies are clearly in a stronger financial position than the coast colonies, which have been incurring deficits for several years. The assumption of the debts of the latter by a South African government would be a clear advantage to the bondholders. The case of the bondholders of the inland colonies is somewhat different. In the event of federation, the existing States would continue intact and would remain liable for their debts, the federal government assuming, as in Canada, a collateral liability as well as the administration of the debts. In the event of unification, however, the four sovereignties in virtue of whose power to tax the various loans have been raised, would disappear and give place to one sovereignty, which would of course have to assume the whole of the debts. The railways of the Transvaal and Orange River Colony would have to remain pledged to the Transvaal bondholders. They might, however, have cause to complain that the security offered by a united South Africa was not equal to the security offered by the Transvaal with its gold mines taken alone. What, moreover, would become of their preference on the Transvaal revenues over all sub-

sequent loans? These points might be met by securing to the Transvaal bondholders a preference over a proportion of the South African revenues corresponding to the proportion which the Transvaal revenues bear to the total revenues of the four colonies at the date of union.

Position simplified by Imperial guarantee of Transvaal debt,

A government which desires to change the form of its obligations is usually met by the difficulty that its bondholders are too numerous to agree to or even to discuss the proposed alteration. The case of the Transvaal debts however is greatly simplified by the fact that the loan is guaranteed by the Imperial government. The ability and willingness of Great Britain to meet its obligations rather than that of the Transvaal is the real security for the loan. So long as the Imperial government is backing the bill the bondholders will have no cause to complain of any measure of consolidation which that government may accept. So far as the Transvaal debt is concerned, South Africa is in the unusual position of having one great creditor with whom to consult, a creditor whose deliberate sanction is required before a change of any kind can be made. If liability for the guaranteed loan were assumed by a South African government, the Imperial government might well see its way to foregoing the preference which it now enjoys.

Comparative incidence of colonial liabilities.

A table is included at the end of statement No. XXIV. shewing the comparative cost of the four colonial debts per head of the population. The comparison so made must be taken

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as subject to certain most important reservations. To begin with we ought to take into account the ability of each colony to carry the debt it has assumed, and to do this we should need to know the average income of the tax-payers. We should then be able to shew what proportion of that income is expended in meeting the charges on public debt. This however is impossible, owing to the lack of proper statistical offices. It would be necessary in fact for each government to spend some years in collecting and tabulating data before they could arrive at any trustworthy estimate of the average income of the private citizen. But even then the revenues from mines and more especially from the gold and diamond mines are a complicating factor, for we ought to consider how far the taxation drawn from them is paid by over-sea shareholders, and to correct the comparison accordingly. The difference in the value of money in the coast and inland colonies has also to be taken into account. We have further more to decide whether the comparison is to be based on the total population or on the white population alone. The latter is the standard more usually employed; but the justification for doing so is far from evident, for in many parts of South Africa the coloured population produces more wealth and contributes more revenue than a large proportion of the white population. The argument that political control rests in the hands of the whites is irrelevant, for no one in comparing the indebtedness of Great Britain and Russia would think of

confining the calculation to the Russian bureaucracy which rules the country and leaving out of account the great mass of the population who are destitute of political power. We have taken, therefore, as the best standard of comparison available under the circumstances, the average amount of taxation paid in each colony per head of the total population. In attempting this comparison we must decide also, whether we are to take the whole debt or the unremunerative debt only. It may be argued that if harbours and railways, the principal revenue earning assets, are placed in the hands of a central government, each of these undertakings may be said to pay for itself. The harbours, however, and also the railways of the Cape Colony are at present working at a loss. If the harbours and railways now vested in the three administrations were each worked as commercial undertakings with a sole view to profit, the Central South African railways is perhaps the only one which could be made to pay its way. In view of these difficulties the comparison has been worked out on the basis of the white as well as of the total population, and for the unremunerative as well as for the total debts.

Compensation

It must not of course be assumed that, if the management of the various debts were centralised in a federal government, the liability for the debt charges would also be pooled. In Canada the consolidation of the provincial debts was accompanied by a complicated system of compensation, intended to protect the provinces which had borrowed less from sharing the heavier burdens incurred by those

which had borrowed more. All sorts of schemes for compensation might be devised, and it is only a question of bookkeeping to give effect to them. In the event of federation the question of consolidating debt and of compensation between the different states could be left for subsequent settlement as it was in America and in Australia. When, however, the debts are consolidated in the hands of the federal government, it will be a question of vital importance whether the States are to retain the power of borrowing afresh. The constitution might indeed provide that if the existing colonial debts are assumed by the federal government, all capital monies required by the States for the future should be raised and loaned to them by the federal government itself. In other words the federal government would become the joint borrowing agent of the States. Unification, on the other hand, would of course involve a simultaneous consolidation of colonial debts. But it would also be necessary to supersede the colonial taxes with a system of taxation which would be uniform throughout South Africa. So far as national taxes were concerned each man would then contribute irrespective of locality and according to his means, and no scheme of compensation would be required to equalise the burden of the consolidated debts, as between one colony and another. The present colonial areas would cease to have any financial meaning when the revenue laws were made uniform throughout South Africa, and the taxes were paid into one national treasury.

CHAPTER XVI.

The Control of Expenditure.

The Budget. Necessity of understanding its import.

Having now shown how the revenues of the various colonies are obtained, we have next to consider how the annual expenditure is controlled, and in doing so our aim will be to describe facts rather than to draw conclusions. Every kind of civilised government must reduce its expenditure to the form of a budget, and no question arises therefore, as to whether this particular function should be assigned to the national or to the local authority. It is essential to understand, however, what the operation means, and how it is carried out.

Estimates of revenue framed by treasury

The first step in the determination of expenditure is to frame an estimate of the money, which the various sources of revenue may be expected to yield in the coming year. These estimates of revenue are initiated in the treasury itself. Such forecasts are of course based to a great extent on the experience of the previous year, but allowance must be made for any anticipated changes. For instance the customs tariff may have been altered and the effect upon the return from each article in question has to be calculated. The calculation is not always easy, for re-

duction of duty leads to increased consumption, and *vice versa*. It sometimes happens indeed that a reduced tariff yields more revenue instead of less. The estimate must also allow for known changes in the policy of the government. But the most difficult portion of the task is to assess those items of the national income which depend upon general economic conditions; in other words to gauge the whole business of the country closely enough to estimate the effect of a coming expansion or shrinkage of trade.

Estimates of expenditure initiated in spending department and finally digested in treasury.

While the treasury is considering what revenue the government will have to spend, it invites the spending departments to say what their respective requirements will be. Each minister, in response to this invitation, orders the departments under him to frame estimates of their needs, and the heads of those departments communicate the order to the heads of the sub-departments. Each of these begins by framing an estimate of his requirements, and when these different estimates are laid before the head of the department, they often amount to a sum greater than he thinks he is likely to obtain. As a rule each sub-department protests that it cannot do with less, and that the savings ought to be effected by one of the others; and then the head of the department has to decide between them, to show where reductions can be effected, and to insist upon their being made. The departmental estimates are then laid by the permanent head before his min-

ister, and generally each minister has to repeat the process of balancing the claims of the various departments under him before submitting his estimates to the treasury. When the treasury has received all the estimates it often finds that the existing sources of revenue will not yield enough money to meet the expenditure involved. The treasury then endeavours to suggest the most suitable economies and to persuade one minister to defer some new undertaking to a future year, or another minister to reduce his programme. It may also consider how payment for the more expensive works can be postponed to years to come in cases where the full benefit will be reaped in the future rather than in the present. In other words it sees how much of the charges can be met legitimately from loan funds instead of from current revenue, a process that involves forming some estimate of the burden that the revenue of the country can bear in years to come.

Final decision rests with cabinet.

When reductions and adjustments have gone as far as negotiation can take them, the total estimates of revenue and expenditure are laid by the treasurer before the cabinet, with whom the final decision rests. The cabinet has then to settle whether the country is in a position to bear the expenditure involved. If not, it may decide to reduce expenditure to a figure which the revenue from existing sources will meet. Failing this it may provide for meeting a deficit either from accumulated balances, if it has

any, or by increasing the public debt. If, however, it considers that the country can contribute more revenue, it will look about for the interests which are best able to bear increased taxation, and will prepare proposals for taxing them. If on the other hand it has a surplus in prospect it may see its way to reduce taxation.

General form which estimates take.

The form in which the public estimates are cast can best be understood from an actual example; for with certain variations of detail all the colonial estimates follow the same general pattern. An abstract of the estimates of expenditure laid before the Transvaal legislature for the financial year, 1907-8, has been inserted as an illustration, in statement No. XXV. It will be seen that these estimates are distributed into six divisions corresponding to the six ministers of the cabinet. These divisions are sub-divided into a number of votes, each allocated to a separate department. For every vote there is an accounting officer, who is, as a rule, the head of the department; and this officer is primarily answerable for seeing that the money is spent in accordance with the law. The total expenditure for one department is called a vote, because when the estimates are considered by the legislature, each vote is put to the house in the same way as each several clause of a bill.

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Estimates in detail.

This table is a mere abstract of the estimates; and to show the degree of detail with which the estimates themselves are framed

we may take as an example vote No. 25 for the Survey Department of Natal from the estimates of that colony for the financial year, 1907-8. As will be seen they show in an appended table the provisions made under other votes for expenditure in connection with the Survey Department. The result is that the real cost of each department can readily be ascertained from the estimates. The actual expenditure for the last year but one, and the estimated expenditure for the previous year, are shewn in separate columns. This feature of the estimates serves to remind us that government is not in fact preparing a brand new programme of government work. It merely issues a new edition of the old standing programme, revised to suit not only the changes which have taken place in the resources and needs of the country, but those which arise from its own improved experience of administration. It should further be noted that each vote is divided into "sub-heads" which are signified by a capital letter. A sub-head may again be divided into "items" each of which is signified by a number.

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Later on we propose to show how this comprehensive programme of administration for the coming year is submitted to the representatives of the people in parliament for ratification in the form of law. Though reduced to the rigid and binding terms of a statute, the estimates are in fact nothing but a forecast, founded no doubt on great experience, and worked out in the minutest detail.

How far the estimates are binding on Government.

but still a forecast only. No government can hope to foresee all the needs of a community for twelve months ahead, or to measure with perfect accuracy the extent to which each need will have to be met. Some latitude must be allowed. The accounting officer, for instance, has authority to allow an excess on one item to be met from a saving on another. With the leave of the treasury an excess on one sub-head may be met from a saving on another sub-head of the same vote. Excesses on votes are met from a contingency fund which in this country is usually fixed by law at £200,000. The subsequent authority of parliament is obtained by submitting a supplementary estimate for approval, and technically such excesses require the sanction of the cabinet before they can be incurred. If the government found it necessary to exceed the contingency fund it would be obliged by the law of the Cape Colony and the Transvaal to summon parliament and obtain its sanction.

British practice in respect of unforeseen expenditure.

The foregoing account may be taken as a sufficiently correct summary of the general practice in South Africa. But the question how far government may depart from the estimates adopted by parliament has been the subject of controversy, especially in Natal. In the practice of Great Britain, generally accepted as a model in matters of financial control, it is usual for the government to draw and spend money in excess of that voted, in so far as it feels sure that parliament will

endorse its action. It would, for instance, have no hesitation in exceeding a vote in anticipation of parliamentary sanction, for such a purpose as the arrest of an outbreak of cattle disease. But if parliament is prorogued a special session is always convened to authorise the extraordinary supplies required when war breaks out. An official of the English treasury has courteously furnished the following note upon the practice observed in the government of the United Kingdom.

"*Supplementary Votes.*

"When a department thinks it necessary to incur new expenditure beyond the limit of its vote, it must seek treasury authority before doing so. If the treasury is satisfied that the expenditure is proper to be incurred, that parliament will not refuse its sanction, and that it would be mischievous to delay the expenditure until parliament can make provision for it, then the authority is given to incur the expenditure in anticipation of a supplementary vote.

"The treasury does not act in this matter under statutory powers. But as the department specially entrusted with the guardianship of financial order it takes the responsibility of anticipating what will be the decision of parliament. And parliament is cognisant of such action. For the treasury is allowed to have possession of a fund amounting to £120,000 called the Civil Contingencies Fund, out of which it makes issues to departments to meet such expenditure until the parliamentary vote is available.

"The need for a supplementary vote may arise from inevitable causes, such as a rise in the price of commodities, or an increase in the public demand upon the services of the department. It is the business of the department to watch carefully for such tendencies, and, if there is danger of the vote being exceeded, to report to the treasury in ample time to enable the treasury to submit a supplementary estimate to parliament. For greater security in this matter the treasury sends a circular to all departments about two months before the close of the financial year calling upon them to review the state of their votes and to report if a supplementary vote will be required, if not, what surplus they expect to have.

"Excesses on sub-heads.

"Although the House of Commons has the detailed estimates before it in committee of supply, it only votes the total amount of each estimate. These totals alone are shown in the Appropriation Act. Consequently parliamentary authority is not necessary to variations between the expenditure and the detailed estimate, so long as the total vote is not exceeded.

"But the treasury under the Exchequer and Audit Departments Act, 1866, is empowered to give directions to the comptroller and auditor-general in his audit to see that any particular part of the expenditure is supported by treasury authority. And the treasury has given a standing direction that all excesses on sub-heads must receive its sanction. Accordingly the practice of departments is, when they foresee any great excess upon particular sub-heads of their votes, to apply to the treasury for sanction to meeting them out of their savings on other sub-heads. If the excesses are not foreseen, or are inconsiderable in amount, the department comes to the treasury, when its vote is closed, for covering sanction to them.

"The comptroller and auditor-general in his report on the appropriation account of the vote, enumerates the sub-heads on which excesses have occurred and states that they have been duly sanctioned by the treasury. If treasury sanction had not been given the case would have to be specially enquired into by the public accounts committee on behalf of the House of Commons. Even when sanction has been given, if the amount is notable, the committee is not precluded from examining the department and the treasury as to the reasons why so large a variation was incurred and allowed.

"The comptroller and auditor-general may also require a department to produce treasury sanction for an excess upon an individual item within a sub-head, if there is anything in the nature of the item, in the circumstances of the excess, or in the terms of the original treasury sanction for the item, which prompts him to do so."

Functions of treasury in controlling expenditure.

It may happen, however, that the calculations of government may be defeated, not by an excess of expenditure, but by a shortfall of revenue. In that case, as soon as it becomes apparent that there will be a shrinkage of income, it is the duty of the government to revise the programme of expenditure.

Although the government has no legal power to spend more than is provided in the votes and contingency fund, it has power to spend less, because the law by which the sanction of parliament is given does not command the expenditure shewn on the estimates, but only permits it up to the extent specified in each vote. But the actual process of curtailing expenditure is always troublesome. Just as when estimates are being framed no department wants to reduce its own expenditure, and each thinks that the necessary reduction should be made by its neighbour, so it generally happens that the treasury is driven to secure the necessary economies by moving the cabinet itself to reconsider the estimates as a whole, and actually to specify the items in its programme upon which the estimated expenditure may be cut down. In this way the treasury is a permanent agency for supervising the readjustments which become necessary in the plan of administration put forward by the government and adopted by parliament.

The Controller and Auditor-General.

It is not enough, however, that money should be found and allocated, and that means should be provided of adjusting the expenditure to income or *vice versa*. The taxpayer who finds the money needs an assurance that it has been properly expended; and parliament, which cannot itself attend to such details, requires an officer to whom it can delegate its responsibility. For this purpose it requires the services of an auditor-

general, answerable to itself alone. His duty is to see whether a proper account is given of all public monies, and whether anything has been done contrary to the letter or spirit of the law and to report thereon to the public accounts committee appointed by parliament for the purpose. It lies with him, subject to the right to appeal to the public accounts committee, to say whether the law has or has not been complied with, and it rests with the executive and with parliament to take what further steps in the matter may seem fit to them. It is the duty of the government for instance to recover unauthorised expenditure from officers surcharged by the auditor-general. As, however, he may be called upon to criticise the government itself, he can only be dismissed from office on petition of both houses of parliament. Generally, however, the auditor is likewise vested with a certain executive function. In the Cape Colony and the Transvaal, for instance, he is empowered to see that no money is issued from the exchequer except in accordance with the Appropriation Act, which gives the force of law to the estimates. The bank, indeed, is forbidden by law to honour drafts, on the exchequer account, unless they are countersigned by the auditor-general. In the Cape Colony, or in the United Kingdom, he bears the double title of controller and auditor-general, in order that it may be perfectly clear that an auditor as such does not exist

to forbid anything, but merely to report. It is in virtue of his function as controller that he can compel the cabinet to call parliament together in order to vote expenditure required in excess of the amount sanctioned by law.

Expenditure of Colonies compared.

Before leaving this subject we may note the actual expenditure of the four colonies. In Statement No. XXVI. will be found tables, based on the estimates for the financial year, 1907-8, shewing the cost of each function in each of the four self-governing colonies. The fact that the functions undertaken by all these different governments are much the same, shows what uniformity exists in the conditions of the country as a whole. But as these functions are undertaken in very different ways it is far from easy to reduce the estimates to a comparative basis. These tables may be taken as the best attempt at a comparison which the circumstances allow us to make.

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Attention is also invited to Statement No. XXVII. which contains a comparative summary of revenue and expenditure for the various colonies for the years 1905-6 (actual) and 1907-8 (estimated). Statement No. XXVIII. contains the balance sheets and consolidated revenue accounts. The tables attached to this and the two previous chapters are prepared in such a way that the whole financial position of the four colonies may be understood.

Statement No. XXVIII.

CHAPTER XVII.

The Civil Service.

CHAP. XVII.

Success in the work of government ultimately depends on the civil service.

So far we have been dealing with what government does. We have divided its duties into two classes, which we have called primary and secondary functions. Whether these duties are executed well or ill depends in the last resort upon the officers to whom they are entrusted. The civil servants in fact are the instruments with which the government works; and its power to give effect to its designs depends in great measure upon whether these instruments are made of the right material and kept in the best condition for their purpose. The business of attending to these essential points is itself a secondary function of government. In the course of this chapter we shall try to understand what kind of service a democracy requires, and how such a service can best be obtained. We shall then be in a position to consider whether a national government would be better able to attain this standard that the present colonial governments have been.

Principles of civil service organisation and their limitations.

The subject of this chapter, if treated in all its aspects would require a volume to itself. We must content ourselves therefore

with searching for the guiding principles which should govern the organisation of the public service. It must be recognised from the outset that when such principles are carried into practice they need to be qualified in many directions. For want of space we can scarcely touch on these qualifications; nor is it necessary to do so. Given a clear conception of what the guiding principles are, common-sense will shew how far they must be modified in their application.

Importance of professional training in public service. Reason why it is overlooked.

No one supposes that railway, insurance or shipping corporations can be conducted by men without technical training. If they were the results would quickly be shewn by bankruptcy. The state, however, meets the cost of inefficiency by taxation which is borne by the productive powers of the country. It may exhaust them all before it is obliged to admit insolvency, so that the results of public waste are seldom declared by absolute catastrophe, as happens in private enterprise. Its methods are not subject to the constant test of competition and the need of professional skill in conducting them is apt to be overlooked. Hence comes the prevalent idea that a public office can be administered by any person of common sense. As a matter of fact civilised states conduct business of the most intricate kind and on the most extensive scale, and need servants more carefully picked and better trained than those of a private corporation.

Special importance of professional service to popular governments.

Such qualifications are perhaps more necessary in the service of a democracy than in that of any other form of government. Under popular institutions it is seldom that ministers in charge of departments are possessed of professional knowledge of the matters with which they deal. They are liable to constant change and are chosen not primarily for any technical qualities but as persons able to interpret and execute the will of the electorate. Where democracy succeeds is in affording freedom of expression for popular aspirations; where it is apt to fail is in giving effect to them. And its leaders themselves reflect this character for they are more likely to excel in speech than in action. It is easy for them to promise the electorate that this or that shall be done. But to translate such promises into actual practice they must have at their disposal a staff specially trained, to understand and give effect to the aims of ministers, and to maintain continuity of administration even though ministers are changed. Democracies are even more prone to fail in securing continuity than in initiating action. In modern times popular government has gone far to redress its own tendency to caprice, by the institution of a permanent service trained to administer, while the electorate and its leaders are deciding what changes to make. Popular impulses like the strokes of an engine, alternate in opposite directions. A permanent service is a fly-

wheel with no political bias of its own. It converts the pulsations into regular action and operates by its momentum to keep them at work.

A civil servant must be equally fit to serve one government as another.

A government therefore, and especially a popular government, requires to be served by a profession in the conduct of its business. By a profession we mean, that those who adopt it are to make their calling the first object of their lives, and to subordinate everything to perfecting themselves for its work. Where necessary they must be ready to forego privileges which fall to the lot of ordinary men. The members of some professions, soldiers or sailors for instance, are expected, if need be, to sacrifice their lives. Civil servants are expected to make the lesser sacrifice of foregoing the freedom of speech and action which an ordinary citizen enjoys. Democratic institutions postulate changes of government from time to time. The civil servant's professional training must therefore be such as will not preclude or hamper him in assisting governments of whatever political creed. It is the duty of the public servant to advise his political chief; indeed his advice will generally go far to shape if not to change the policy of his ministers. It is his duty to represent his views freely; to make sure that all the information and arguments which may influence the decision are in his chief's possession; but if after having done so he is over-ruled, he must forget his own opinion and give effect

to that of the minister, who should under all circumstances accept an undivided responsibility for the ultimate result. Speaking generally we may say that it is the business of the public servant to treat the policy of each government as if it were his own, and when the government changes to be equally loyal to the policy of its successors. He must therefore deny himself the liberty of endeavouring to give effect to whatever political views he holds. He must even forego the ordinary means by which men in other callings use for protecting their professional interests. The civil servant may in fact be called upon to renounce the rights not only of political but also of trade combination.

How the state may enable him to do so.

It is for the state to create conditions which will attract the best men to its service, and enable them to perfect themselves in their profession when they have done so. If the public servant is to concentrate his mind on his duties he must be placed beyond the reach of poverty. A career must be promised and at least a competence, and to the best officials more than a competence. Unless the rewards offered are secure as well as substantial they will fail to attract suitable men. In the public service this is perhaps more necessary than in any other career, because the knowledge and training it gives cannot as a rule be turned to profitable use in other employment. A doctor or an engineer may carry his skill anywhere, even to foreign countries; but it is difficult for a discharged civil

servant to find a use for his experience under a system of government or in a society different from his own. Many careers, moreover, offer those who follow them the chance, not only of a competence, but of wealth. In every generation fortunes are founded by eminent doctors, lawyers or engineers; but public servants can seldom expect such reward, and unless government is content to be served by the leavings of other professions, it must offer some special inducement to competent men. This it can only do by promising a continuity of employment unknown in private professions.

Pensions, a means to public economy.

There is also the question of providing for the old age of the civil servant. As we have seen the state cannot offer the prospect of wealth to its servants, and it must therefore be able to assure them a competence. It must, however, be able to retire officers who have grown too old for their work. But if the civil servant knew that he would be retired at 60 without means of subsistence, competent men would seek any other kind of employment unless the state offered them salaries so large that they could afford to insure themselves against old age. If this were the practice followed, the profits of insurance, which would amount to a heavy sum in a large civil service, would accrue to private corporations. The pension system simply means that the state provides the insurance and saves the profit for itself. The establishment of a proper pension system, so far from being

an extravagance, is really a most important measure of public economy. To put the matter in a nutshell, pensions are a means of attracting good men. They are an economy because they enable the state to dispense with servants who are past their work and to quicken the promotion of younger men. It is unnecessary to enter here on the endless details, actuarial and legal, of schemes for pensions and superannuation, for the subject is discussed at length in the admirable reports of the civil service commissions of the Cape Colony and the Transvaal.

Reasons for a system of increments and grading.

As the value of a public servant increases with experience, so should the scale of his rewards. In the case of the rank and file steady progress in pay helps to redeem them from the deadening effects of routine. The expenses moreover of those who marry continue to increase until the education of their children is complete. The public service should therefore, provide to its members an assured but gradual improvement of income; but with due regard to the state's capacity to provide the means. Some of the Australian colonies instituted a system of regular increments which a civil servant could only forfeit by neglect or misconduct. The result was that the state's liabilities amounted in time to a figure too heavy for its revenues to bear. To avoid this danger it is usual to apply the device of grading to the lower ranks of civil servants, which are by far the

most numerous and impose the heaviest burden on the public purse. This can best be explained by describing what has been done in the Transvaal. The clerical service has there been divided into three grades. Those included in the lowest grade begin with a salary of £180 a year and rise by four increments of £15 each to a maximum of £240. The second grade consists of clerks with salaries rising from £260 to £340 per annum by four increments of £20. The first grade comprises clerks with salaries rising from £360 to £440 a year by four increments of £20 each. The civil servant has a right to his annual increment until he has reached the top of his grade, unless he has been guilty of misconduct or neglect. He cannot, however, be moved from one grade to a higher unless there is a vacancy and then only if he has shewn capacity for a higher range of work. Within the grade, therefore, increments accrue automatically; promotion, however, from one grade to another must depend upon the merit of the individual.

Higher posts not graded.

Above the grades, into which are organised the rank and file of the service, it is usual to distinguish by name the higher posts which involve individual responsibility. Sometimes these carry a fixed salary, sometimes the salary is incremental; but in either case they differ from posts in the lower grades by being distinguished and remunerated, each in accordance with its individual duties, and not merely as being one of a class. The rank

and file, who undertake the work of routine, will necessarily be chosen at the age of twenty or less for skill in shorthand, typewriting, book-keeping and other clerical attainments. If all the responsible posts have to be filled from the lower grades, men of the highest capacity and training will be lost to the public service. For these posts candidates should be chosen for wider qualifications than are required for routine work, and from older men who have had time to devote to higher education. There should in fact be two divisions, one for routine work recruited from men below the age of twenty years, and another recruited from men a few years older for the work of administrative control. The door into the upper division should be kept open to men of exceptional capacity in the lower.

Distinction of administrative and executive branches.

Hitherto we have been discussing the civil service from the point of view of the rewards it has to offer; but its members have also to be classified in accordance with the nature of the work they perform. There is first of all the administrative branch which corresponds to the general staff of an army, together with its clerical assistants. Secondly, there is the executive branch which includes the officers and men of the fighting line. The divisions between the grades may be expressed by horizontal lines; the divisions between the administrative and executive branches by vertical lines. In any army, for instance, a general may be employed in the executive

branch, and a subaltern may be a junior member of the general staff. Similarly, a clerk attached to the secretary of the public works department is an administrative officer, although he may be drawing no more than £200 per annum. An irrigation engineer in the same department may be drawing £1,000 a year, but he is an executive officer.

Evils arising from inter-dependence of public service and political parties.

We have now seen what the general structure of a public service should be. As we have said it should be a profession equally fitted for the service of whatever party happens to be in office. Precautions must therefore be taken to keep the service independent of political parties and to keep the parties independent of the service. In so far as the civil servant depends for his appointment in the first instance, and for his advancement thereafter, on the good-will of any political faction he becomes unfit to serve their opponents when in office. They in their turn will be tempted to secure devoted servants by a similar process of benefaction; and the ultimate result may be that each change of government will mean a convulsion in the public service. When a democracy changes its agents every time it changes its mind, it deprives itself of the power of directing its own action. Its driving force, no longer regulated, may be turned at any time to its own destruction. The spoils system is perhaps the particular vice of large states. In small communities the civil service constitute so large a proportion

of the electorate that parties are apt to defer too much to its political influence. Each government, fearing the power of the service vote, hesitates to adjust its organisation which in time grows out of shape and perhaps out of proportion to the needs of the community.

Cure for these evils.

The cure for both these evils is a system which relieves the government of the day, so far as is possible, from the duty of deciding questions which affect the selection and personal prospects of public servants. Of recent years the more enlightened democracies have steadily advanced in this direction. The administration of any country, not protected by its geographical position against dangers from without, would soon break down under the American spoils system. But even in the United States, its dangers have now come to be realised. From President Cleveland's time onwards a determined attempt has been made to remedy the mischief initiated by President Jackson in the early days of the republic, and more and more of the federal offices are exempted every year from the vicissitudes of party. In Great Britain the government has long renounced its power of patronage and has assigned the duty of selection to public examiners. The essential feature of public examination is this, that it places appointments beyond the gift of an ephemeral ministry. This change of system relieves the government as much as it improves the

service. It economises the energies of both. As Professor Bryce has shewn, the management of the spoils system makes such demands on the strength of an American president and lets loose such bitter passions amongst his followers, that he has scarcely leisure to attend to the general administration of the country. A government escapes, not merely a great temptation, but also an intolerable burden when it is bound to refer adventurers in search of an office to a judicial authority independent of itself.

Real significance of selection by examination is exercise of patronage by non-political authority.

Where these principles have been recognised the selection for the civil service is generally made by competitive examination. This plan has been criticised, not without reason, on the ground that paper examinations are too narrow a test of the standard of ability required for administration work, and that candidates should be chosen, as the head of a business firm would choose the men upon whom the success of his enterprise depends, by the process of seeing them and judging of their moral and intellectual qualifications. We should not, however, confuse the incidental with the essential features of the system. The real reform effected when examinations were introduced lay less in the nature of the actual test applied, than in the fact that the process of selection was placed in the hands of an independent commission, with no claims to consider but those of personal merit. But upon the point of detail there is, as a matter

of fact, a tendency in certain quarters to supplement the rigid test of paper examinations by the personal scrutiny, upon which the private merchant or manufacturer would rely. Candidates for commissions in the British Navy are now selected in the first instance by a board who interview the boys and interrogate them, but not on any set subjects. The principle, however, remains intact, because the board who apply the test have no political interests to serve. The essential point is to entrust the selection to an authority with the same independence of political control as a judge enjoys. If this authority is a board, it is usually called the civil service commission; if it is an individual, he is called the civil service commissioner.

Promotion and discipline.

By such means the public official can be saved from the sense that he owes his appointment to either political party. But even gratitude is less likely to deflect his judgment than intelligent anticipation of favours to come. It is even more important, therefore, that he should not feel that he has to look to either party for his future advancement. The same independent authority as selects in the first instance, should also be charged with the task of dealing with promotion, retrenchment, reduction in status, or dismissal. There is, moreover, a special reason why some authority, independent of all the executive departments should have much to say in the matter of promotion. It is of the

first importance to enable the best men to emerge from the ranks and to reach the posts of higher responsibility. If promotion in each department depends entirely on ministers or permanent heads, vacancies will generally be filled from the staff of the department in which they occur. The head of the department has little opportunity of recognising the merits of officers in other branches of the service, and is naturally prejudiced in favour of his own staff. Unless some authority, in touch with every department and identified with none, is instituted to deal with this matter, the service will come to be divided into watertight compartments. The chance that better men will remain in inferior posts will be greatly increased thereby. The free circulation which enables merit to rise to the top will be checked.

In the foregoing remarks we have confined ourselves to principles applicable to the rank and file, who constitute the mass of the public service. The government must necessarily have more to do with the appointment of officers to posts of higher responsibility or to those in which technical qualifications are required.

Discipline and dismissal to be dealt with by commissioner.

We have dwelt on the importance of securing the tenure of the public servant, but it must be remembered that this security has its attendant dangers. Carried too far it is likely to make a civil service inclined to rest upon its oars, over confident in its own opinion, wedded to its own precedents, in-

clined to magnify its own importance, dilatory and subject to all the faults which Dickens branded with the name of "red tape." For this reason promotion cannot proceed by mere seniority, and younger men of conspicuous merit must be lifted over the heads of older men who have less. For this reason, too, officers of proved inefficiency must be actually weeded out. The taking of such disciplinary measures is invidious in the extreme. Men are rare who will recognise the justice of their own supersession or abstain from contesting it by any means open to them. If this difficult task is thrown on the ministers of the day, the political friends of the aggrieved officer will bring pressure to bear on them. It often happens that such personal questions are dragged into parliament itself, which is quite unfitted to deal with them on their merits. The best solution of this difficulty also lies in the appointment of a strong civil service commission or commissioner so placed as to act with the independence and impartiality of a court.

Relative merits of one or more commissioners discussed.

Whether this independent authority should consist of one person or more than one is a question of some importance. A board is a cheaper arrangement because it can be formed from heads of the departments already in government pay. A single commissioner cannot obviously be an officer associated with any one department. He must devote his whole time to the work, and his standing like that of an auditor-general must be commen-

surate with his responsibilities. For colonies he is probably too expensive an institution because colonial services are too small to provide him with sufficient work. There are, however, serious drawbacks to the efficiency of a board. Each member inclines to represent his own department, and the commission becomes a board of conciliation rather than a court of adjudication. Questions will be decided on the principle of give and take between departments represented, while the departments not represented will never feel that the interests of their own members are fully considered. The public interest in the efficiency and economy of the service as a whole may tend to become obscured. In the second place the members cannot be really independent of a government upon whom their individual prospects depend. Lastly the sense of responsibility is weakened by the fact that no one person is visibly accountable for the state of the public service. There can be no question that a single commissioner who devotes his whole time to the work is the more efficient instrument. Like the consulting engineer of a mining group, he is able to view the system as a whole and to see the parts in their proper relation to one another. Besides this, having his whole time at his disposal, he is able to obtain an intimate knowledge of every detail of the work and of the machinery required to perform it. He can best see how it can be organised on the

most economical scale. Above all he can get into touch with the officers who have any responsibility throughout the service and form an opinion of their comparative merits. Associated with no one department, he is in a position to arrive at an impartial view. His judgments are like those of a judge—real decisions; and not like those of a board of conciliation—a compromise between conflicting interests. The points to be decided moreover are personal, and much less friction will be aroused and there will be less room for intrigue where they are settled by one individual instead of by many. Finally one commissioner will feel that he has an undivided responsibility for the state of the service. If it becomes over-manned or overpaid he knows that the blame will be concentrated on him. He has the strongest motive to see that it is maintained in a sound condition.

Relations of commissioner to government.

The commissioner, however, should not be clothed with powers which would constitute an *imperium in imperio*. He will have quite enough power in practice, if it is provided that the government must consider his advice. In the case of all but the more important appointments, the law should provide that if his advice is not followed the reasons should be stated in writing and laid before parliament. Nothing can then be done in a corner for reasons which will not bear the test of public scrutiny. The commissioner should of course enjoy the same security of tenure as parliament accords to the auditor-general.

So far we have tried to set forth the principles to which the organisation of a civil service ought to conform. The type of civil service described above is one which is scarcely attainable in a municipality or even in a colony. But the object of union is to create a nation, and we have therefore endeavoured to see what a great national civil service ought to be. From the actual course of their development and from the smallness of their white population it is not to be expected that any of the colonies should have evolved a civil service approximating to the model we have described. It is necessary, however, to note the conditions under which the various services have grown up.

Proper standard of civil service organisations not attainable under colonial conditions.

In the Cape Colony the foundations of the civil service were laid under Crown Colony government, and additions were made from time to time, as circumstances required, on no consistent plan. Under parliamentary government, various attempts have been made to organise the service on systematic lines. The final attempt was the appointment of the Civil Service Commission in 1904, but effect has only been given to its reports in a very limited degree. The fact is, as everyone knows, that for years, political parties in the Cape Colony were evenly balanced. In such circumstances the government of the day is not in a position to take the strong measures needed to place the civil service beyond the reach of political influence. The difficulty of the task has been greatly aggravated by a

Development of the Cape service.

provision of the law which strangely confuses the proper functions of the cabinet and parliament. Under the civil service law the position of a large class of civil servants cannot be touched except by consent of parliament. The motive of this provision is clearly admirable, for it was intended to afford security. The means, however, are singularly ill-devised; for, if it is bad to leave questions affecting the personal status of individuals in the hands of the executive government, it is infinitely worse to entrust them to parliament which must act of necessity on party lines. As we have pointed out the matter is one which, like the interpretation of the law, should rest in the hands of neither but should be remitted to an impartial authority which within certain limits is independent of both.

Political influence of the service.

In the Cape Colony the political influence of the public service itself, including the large executive staffs of the posts and railways, has seriously impeded reform, owing to the accident that parties have been so nearly balanced. In the smaller colonies the civil servants are even more numerous in proportion to the inhabitants, and their political influence over members of parliament may be formidable under any party conditions. The smaller the colony indeed, the more difficult it is to adjust the relations of the civil service to the government, for neither the work nor the salary involved would justify the employment of the whole

time of a special commissioner appointed for the purpose.

Civil service in the inland colonies.

In the inland colonies the civil services were put together under the difficult conditions that follow a war. Almost the whole fabric of society was in ruins and had to be rebuilt as speedily as possible. The new government working under extraordinary pressure could scarcely construct the civil service on scientific principles, or bring the departments into normal relations with one another. More hands were required to build the machinery of government anew than to operate it when restored. So the difficult and invidious task of reducing establishments had to be undertaken, first by the government which had constructed them and afterwards by their successors. There too, when responsible government came, the question of the civil service has been sucked into the political whirlpool where in all probability it will now continue to revolve. In each of the colonies, with the possible exception of Natal, the question is further complicated by the mutual jealousies of the native born and immigrant populations, a line of cleavage which so far coincides with the division of political parties as greatly to emphasize it. Each believes that the blame rests with the other. But those who, even in the heat of a conflict, would seek the means for ending its occasion, will find its cause less in the defects of individuals than in those of the petty state itself. Under colonial institutions the civil service will

always bulk too largely, in comparison with other professions, to be left outside the arena of politics. It will always exercise too great an influence on political parties. Provincial governments can seldom be strong enough to use the remedies which a national government can apply.

Opportunity of reforming public service offered by union.

The creation of a national government in South Africa, in the place of the present colonial governments, is such an opportunity as comes but rarely in the history of a people, for lifting its institutions to a higher plane. The material of the civil service will remain the same, but its structure and its relation to the community it serves must all be created anew. The crowning achievement of the first government should be to leave for their successors an organisation perfectly qualified to interpret and to execute their purpose whatever it may be, an administrative instrument, which every government will find as ready to its hand as the last. To remove the judiciary from the field of political conflict is merely to perpetuate a great tradition which others have made. But so to remove the public service is a task for statesmen who would give to the future a richer inheritance than they themselves have received from the past.

Structure and cost of existing services.

For such a service South Africa already possesses the material in the existing services of the present colonies. The present structure and cost of these services may be

gathered from a study of the diagrams included in Statement No. XXIX. A large proportion of their members have vested rights which will have to be respected, but to say what these rights are would involve a more detailed examination of the civil service and pension laws of the various colonies than is possible here. In any case they should be secured by the constitution. It is very improbable, however, that reorganisation will lead to the displacement of members of the existing staffs. A vast amount of special labour will be required during the period of transition which will last several years. It is idle to suppose that the closest form of union will lead in the immediate future to a reduction in the cost of the public service. What it will do is to arrest its indefinite growth and the economies which result will be much more important in ten years than in five. It cannot, therefore, be assumed, that union will be followed by retrenchments in the public service.

Statement No. XXIX.

The task of constructing the new service from the old will of course be a difficult one. It will involve the consolidation of intricate laws which regulate service and pension and the settlement of a host of personal questions. Territorial claims will add their voice to those of party. Each colony will consider itself in honour bound to urge the cause of its own servants, and if the burden of selection is imposed on the first government of South Africa, the attention of that government will

Difficulties involved in reconstruction.

be distracted from its proper work by conflicting and passionate claims for place. The enemies it will make will be more numerous than the friends. Like the American President it will be devoting most of its time to duties unworthy of statesmen, at a period when its strength is most needed for the task of political construction. For if South Africa is really to be made one, the hands of government will be full of constructive work for at least ten years from the first establishment of union. These dangers can all be avoided by assigning the task of reorganising the civil service either to a single commissioner or to a commission with a chairman who combines independence of any local or party interest with long experience of public administration.

CHAPTER XVIII.

Local Self Government.

Two agencies of government (i) the civil service.

The civil service, discussed in the last chapter is the immediate agent of the executive government. The theory is that all the acts of public servants are performed on instructions, expressed or implied, of the government and that ministers must accept responsibility for all they do. In England, where this theory is carried to its logical conclusion, mistakes made by civil servants are assumed to have been committed on the authority of ministers themselves, except in cases so flagrant as to be visited by dismissal or disgrace.

(ii) Local authorities. Two stages in their development.

Local authorities are a government agency of a different kind. They are the creations of statute law and are amenable to its commands, but not to those of the ministers themselves. Within the scope afforded them by law they act entirely on their own initiative, and the government of the day is not responsible for what they do. They are usually created in the first instance to meet the special needs of particular localities. A town has needs which differ entirely from those of the surrounding country and a municipality or other local authority is created in order that it may meet them for itself. But as we have seen, there are

certain national functions of great importance which are better performed through local authorities. As soon as this comes to be recognised, local self government can no longer be confined to isolated spots with special needs. The whole country must be divided into areas with a local authority in each, so that government can operate through these agencies in every part of its jurisdiction.

Natal and inland colonies have only attained first stage.

Natal, the Orange River Colony, and the Transvaal have only reached the first stage of local self-government. They, as well as the Cape Colony, have developed a system of municipal government in the towns. The larger municipalities are established under special acts of their own and the smaller ones and the village management boards under general municipal acts. For our present purpose it is sufficient to note that under a federal system they would derive their powers from the sovereignty of the individual States, under a unitary system from the central government.

Second stage attained in the Cape Colony.

The second stage of local government has been reached in the Cape Colony, where most of the fiscal divisions have elected councils, with power to levy local taxation. The principal duty assigned to them is the making of roads, but they have a number of minor functions as well. Their importance, however, resides in the fact that they constitute a general machinery of local self-government, whose functions are capable of indefinite extension. In the native territories they are used in a modified form as an agency of the government's Na-

tive policy, and as we have shown in Chapter VI., they are an agency of the most important kind. Side by side with these local authorities are the school boards. The districts over which these boards preside may coincide with or form parts of fiscal divisions. Two-thirds of the members are elected by the ratepayers. Their estimates are subject to the approval of government. Part of their expenditure is met by school fees, fixed on a scale approved by government, and the balance by equal contributions from the government and the divisional council. As two-thirds of the members are elected and as they have powers of local taxation, they are local authorities in the full sense of the word. Further details of the constitution and powers of divisional councils and school boards will be found in Statement No. XXX.

Statement No. XXX.

Importance of a proper conception of local government in discussing South African union.

We may note that it is only in the largest colony that any approach to a complete system of local self-government has been made. The larger the State indeed the more necessary does it become to act in many directions through the agency of local authorities. The establishment of such authorities is a necessary part of any scheme for amalgamating the several colonies into one large State. Some clear conception of what is involved in the principle of local self-government is essential therefore to the performance of the task before us.

Local bodies are agents of the local communities they represent.

When discussing the question of revenue in Chapter XIV. we remarked that local self-government was in the first place an expedient for

reconciling local freedom of action with fiscal justice. Certain services such as fire brigades, lighting or water supplies are required by the inhabitants of particular localities, and if they could only be provided by government at the national expense, a local community would not be free to obtain the special benefits it needs for itself. It could only appeal to the central government, and that appeal where successful could only be granted at the cost of all the other communities, which would derive no benefit from the expenditure involved. Local taxation, therefore, is one of the first conditions of local self-government. But in States, where the principles of representative government are recognised, local taxation necessarily involves control of the expenditure by the individuals taxed. Services such as fire brigades, street lighting, and public baths, the benefit of which is strictly local, might be left to be administered and paid for entirely by local authorities. For this purpose government has merely to establish elective local authorities and leave them to do the work for themselves, for whether they do it efficiently or otherwise is of no concern to the neighbouring communities. But even so there are certain respects in which they may by their action affect the health of the nation at large. Local corruption may end by poisoning the whole constitution of the State and reckless borrowing by local bodies may cripple the national resources. It is the duty of the government therefore to see that municipalities do nothing to prejudice public morality or national credit.

Local bodies are likewise agencies of the national government.

In Chapter X., however, we have shown that while certain of the more important functions of government, such as education, are of national interest, yet it is essential that they should be performed in a manner appropriate to the conditions and needs of each locality. It is in the interests of the nation that all its citizens should be educated; but different localities may require different degrees and kinds of education. Administration through a civil service means the carrying out through local officials of a policy dictated from a central office; but in a large country a central office cannot know what each locality wants. If the administration is entrusted to local authorities they may each achieve the purpose of the State in the manner best suited to the special conditions of their several communities. In a country so small as Natal it may be possible for the government to administer every school for itself. Any attempt to do so in countries like the Cape Colony, or still more in the United Kingdom where the schools are numbered by tens of thousands, would mean the application of uniform methods to communities which differ in all sorts of ways. It is difficult moreover to secure economy when too much detail is administered from a central office. If the critics who enlarge on the errors, waste and corruption incidental to local self-government, were to ask themselves what the consequence would be of entrusting the same duties to one vast bureaucracy, they would recognise that local bodies are at any rate the lesser of two

evils. It is evident, indeed, that functions such as education, the preservation of public health and the making of roads can as a matter of fact be carried out more cheaply and efficiently in the long run through local authorities than through a central government department.

Special importance of local self-government in democracies.

In large democracies there is a special reason why the functions of government should be administered as far as possible through local authorities instead of through government departments. Generally speaking, the freedom of self-government can be enjoyed by a people only so far as they themselves know how to govern. The first republic of France while attempting to dictate the price of bread, failed in the primary duty of maintaining order, and soon reverted to a despotism more powerful than the monarchy it had destroyed. Close on a hundred years of political experiment was needed to teach them the art of governing themselves. The Americans on the other hand, though a far younger people, were able to establish and maintain a national republic of the most difficult and complicated kind because they had learned, in the management of local affairs to understand the limitations of government. In a great democracy local government is a school of administration where all sorts and conditions of men can study its elements for themselves. Government is the art of organising society, and is at its best when its practice is most widely diffused through society itself. It cannot flourish as the mystery of a close pro-

fessional guild. The system of local self-government in the democracies of the British Empire is mainly the product of local authorities, who have been able to convert their experience into law by the valuable device of private legislation. When in the course of its work the local body discovers a need which it lacks the power to meet, it may submit the matter to parliament in the form of a private bill, and facilities are afforded for passing these bills into law. The central government watches these local experiments in administrative method, and when the local laws have become too numerous, diverse and complicated, selects the provisions which have worked best and consolidates them in the form of a general statute. The great public health laws of England and Scotland are to a great extent codifications of local acts.

Principles of government control over local authorities.

The importance of local authorities, therefore, as an agency of government, is greater in democracies of wide extent than in small countries, or in those where popular government has not been attained. But as they are agencies of government, they must submit to its ultimate control. A great part of the money required for the execution of national functions must be entrusted to those local authorities to spend. But they are not like civil servants, answerable to the direct instructions of government. They are less concerned to comply with its wishes than with those of their own constituents who are naturally desirous that as much of the national revenues as possible should be spent within their own area. There must, as we

have shewn, be some financial check on extravagance, which can best be supplied by requiring them to raise a certain portion of their own expenditure from their own electors. As the performance of the national functions entrusted to them have a certain special importance for each locality it is only just that the locality should also bear a part of the cost Government however is concerned to see that duties, which are primarily national in character, are performed with a certain degree of efficiency. Here again it is met by the difficulty that it cannot exact implicit and immediate obedience from local authorities as it can from its own servants. The operation of punishing a local authority is usually ineffective and always slow.

Control of State over local authorities depends on its power of reconstructing them.

The ability of the State to ensure thrift and efficiency in local self-government really depends on its power of abolishing a defective type of local authority and of creating a better type to take its place. Such authorities to be useful as agents of government must, when left to themselves, produce the desired results on their own initiative. A Government must in fact proceed by a series of experiments to arrive at a type of authority which can be trusted to fulfil its purpose. So far as it can, it alters the existing mechanism to correct the defects as they are discovered; but from time to time it throws the whole machine aside and constructs another on different lines. In South Africa the practice of local self-government has advanced so little that we must go further

afield to watch this process in operation. An excellent example is afforded by the development of the system of control over public education by local authorities in Great Britain in the course of the last forty years. There the government began by entrusting the administration of primary education to school boards, which were local authorities established for that purpose alone. Later on it established county councils, and entrusted them with the making of roads, the protection of public health and other duties of a general administrative kind. Meantime the mechanism of the school boards was improved and adjusted until it became apparent that the efficiency of these bodies was impaired by certain radical defects in their constitution. In many localities the best administrative talent was absorbed by the county councils and the school boards became the resort of educational cranks and religious or anti-religious enthusiasts who were really less interested in the cause of education itself than in the propagation of some doctrine or fad. Both authorities, moreover, had independent powers of levying rates on the local taxpayer. There was no one authority to consider the taxpaying capacity of each locality as a whole, and to adjust the local budget accordingly. Profiting by the experience of thirty years, government abolished the school boards, remodelled its scheme of local authorities, and entrusted to county councils the control of education as well as of general administrative work.

Local authorities cannot be moulded like government departments.

Government departments are far more plastic than local authorities. They can be adjusted by insensible degrees as experience directs to the changing needs of an administration, and, as we have shewn in the previous chapter, a special authority can be created, like a consulting engineer, to see that this is done. But local authorities are the creatures of statute, and cannot be so moulded by the government from day to day. They must be established and left to do their work for a time. They must then be altered deliberately by law as the increased experience of government and the changing needs of the country may require.

Three conditions of local self-government.

It will be seen therefore that the proper performance of government functions through local authorities is subject to three conditions. Part at least of the expenditure must be defrayed by local taxation. The local authorities must therefore in democratic countries be representative of the local taxpayer, and cannot be subject to the immediate control of the central government. It follows that if the central government is to secure efficiency it must be in a position to remodel the constitution of the local authorities from time to time as their experience and its own may direct. When speaking of local self-government in the course of this chapter, we shall imply the existence of local authorities which conform to these conditions.

States in a federation cannot conform to these conditions.

It will be evident at once that States which have united to form a federation are not local

authorities in the true sense. They may have a system of local taxation administered by a body controlled by an electorate of their own. They may even be charged with functions which are of common importance to every citizen in the federation, and the federal government may contribute to the cost of carrying them out. They may contract with the federal government to act as its police agents in enforcing federal law or in receiving federal convicts in their prisons. But we know by experience that in any matter where interests clash government by agreement is sure to break down. The essential reason for union is the need of a government capable of executing a uniform policy in matters of common national concern. It is even conceivable that a federal constitution, while leaving to the States an independent sovereignty in some matters, might subject them to the sovereignty of the federal government in others. But though it might make them subject in law, it could not render them amenable in fact. No amount of legal provisions would induce a recalcitrant State to act as the effective agent of the central government in the execution of a native policy to which it was opposed. We are still brought back to the same point as before, that a government to secure effective administration through the agency of local authorities, must be able to remodel them whenever they have proved themselves unsuited for its purpose. But so long as the States retain one vestige of sovereignty the federal government cannot be

empowered to change or cancel their constitutions. They are collateral and not subordinate authorities, and we must recognise that in giving effect to important functions, a federal government cannot in the end employ a class of agents which it cannot control. The States of a federation are not properly speaking local authorities at all.

But a federal government cannot create and employ local authorities of its own.

But why, it may be asked, should the federal government not create and employ local authorities just as it creates a civil service of its own. The answer is that if the States as well as the federal government were both at liberty to establish different sets of local authorities side by side, a condition of intolerable confusion would ensue. The areas and franchises of local authorities and systems of local taxation would be established on different principles by each, and these would inevitably differ in most of the States from the uniform areas franchise and systems of local taxation created by the federal authority. The liability to be assessed and rated by different governments on different principles would become an intolerable nuisance to the owners of property. But as the power of creating local authorities cannot be exercised concurrently by the federal government and the States, it must belong to the States alone. The principle of local self-government cannot be applied by a federal government at all. A federal government is in fact one-armed, and should only be assigned such functions as can be administered through government officials without the intervention of local authorities.

Federal governments should therefore be limited to functions which should be carried out through government departments.

It is impossible to exaggerate the importance of this conclusion. As we have shewn there are certain functions of government which can only be administered with effect by means of local authorities. The larger the State the more necessary does decentralization to local authorities become. In a State the size of Natal local authorities with the exception of town councils and village management boards may be dispensed with altogether. In a country the size of the Cape Colony the administration of primary education, of public health law and of roads, could scarcely be well performed by huge centralised departments. In a united South Africa the performance of such duties without the agency of local authorities would be utterly out of the question. However strong from a national point of view the arguments may be for placing any functions in the hands of the national government, it will be necessary that this consideration should be taken into account. It is essential, for instance, that there should be uniformity in the law of weights and measures, but the value of a general law will be greatly impaired unless it is administered with a certain measure of uniformity in all parts of the country. A department which undertook to test weights, scales and measures throughout British South Africa and to secure that shops complied with the provisions relating to sale by net weight, would be oversized and unwieldy. If on the other hand the national government enacted the law, and it was left to the separate States to enforce

it, without any security for evenness of administration, fraud might be rife in one part of the country while it was checked in others. It would be utterly impossible for the federal government to undertake the duty of primary education. At best it could only be empowered to establish and conduct secondary schools and universities. But the difference between primary and secondary education is one of degree rather than of kind, and it would be extremely difficult to decide when the federal government was trenching on the province of the state government and *vice versa*. Worst of all, education in the more backward States might be allowed to fall into arrear, and the national government would be powerless to provide a remedy.

Exercise of collateral powers useful only in uncontentious matters.

This difficulty, which is inherent in the federal system, may be mitigated in a measure by the Canadian plan of leaving a number of powers to be exercised concurrently by the federal and State governments. A federal government may then make such voluntary arrangements as it can with the States, and in matters involving no principle, such as arrest or imprisonment, may succeed in doing so. But where the same matter is placed within the jurisdiction of the States and of the federal government, provision must be made that, in the event of conflict, one of these authorities must prevail over the other. In any contentious matter, such as education, a protracted conflict might ensue to the prejudice of the community at large. It was to difficulties of

this kind that Sir Wilfred Laurier perhaps referred in the remark quoted by Sir Percival Laurence: "Above all things beware of the pitfall of concurrent jurisdiction." In the long run the authority which is really sovereign in the matter will be left to do the work and to bear the cost.

Conclusions summarized.

We are led to the conclusion therefore that any constitution which is based upon the federal principle must divide the duties of government between the States on the one hand and the national government on the other. Both must be sovereign within their own sphere, both must operate side by side, and neither can control or work through the other, in any matter of a contentious nature. The faculty, moreover, of administration through local authorities must be confined to the States, and nothing of importance must be assigned to the federal government which cannot be administered properly through the sole agency of government departments.

Native affairs an inseparable aspect of all government functions in South Africa.

Before we assume that a system under which the United States, the Dominion of Canada, and the Commonwealth of Australia are governed, is applicable to this country, we are bound to enquire whether the functions of government in South Africa admit of division into two classes on these rigid lines. In Chapter VI. we have pointed to the imperative need of a consistent policy determining the relations of the coloured races to the white. But native affairs cannot be cut off and put in an office by themselves, like agriculture or public works.

The problem is connected in the most intimate way with duties so different as public education and defence. It is raised by the bye-laws of municipalities. Even the post-offices and railways are called on to consider whether they are to provide separate counters and carriages for coloured men. Most of the bills which the parliaments discuss bring up the question in some form or other. It pervades the whole sphere of administration and raises fundamental questions of civil and political rights. No constitution which limits the sovereignty of the national government can therefore reserve to it a final control over native policy. The problem is one which, however it may be evaded in the constitution, will sooner or later assert itself in fact.

The warning of America.

Those who appeal to the example of previous federations, should beware of ignoring the warning offered by the one case in which the same complicating factor was present. When the constitution of the United States was settled in 1787 the jealousy of the States denied to the national government the sovereignty which would have enabled it by slow and insensible degrees to assimilate the social systems of the North and South. The States were left to settle, each for itself, the relations of the negro to the white population. In the course of 70 years it became apparent that one constitution was incapable of accommodating social systems which differed so radically, and the federal government was faced by the alternative either of disruption or of enforcing by

the sword a policy which it was powerless to enforce by law. The will of the majority was imposed on the Southern States by a civil war the fiercest and most protracted of modern times. But even then the question was settled only in so far as was necessary to preserve the unity of the American people. So restricted even now is the sovereignty of the central government that it cannot suppress the peonage, lynching and massacres tolerated in some of the States, or purge itself from a disgrace in which the nation at large is involved. In 1790 the negroes were less than a quarter of the whole population, and to-day they are less than one-eighth. In South Africa the coloured people are as eight to one, and with such a warning before us we may well hesitate to establish a form of government under which the common conscience and common will of the nation as a whole cannot in the last resort prevail.

CHAPTER XIX.

Two Pathways to Union.

CHAP. XIX.

Subjects of parts II. and III. distribution of duties, revenues, and machinery of government between central and local administrations.

The analysis of primary functions contained in Part II. affords material for deciding what portions of the work now undertaken by the Governments of the four colonies should be handed over to a central government, and what portions should be left to local administrations. When this point is decided, the next question is what corresponding adjustments will have to be made in the revenues, debts, and machinery of the existing governments. Whether the scheme is based on the federal or unitary principle, the existence or creation of local administrations has to be assumed. In a federation they will be States, sovereign within certain limits, and co-ordinate with the central government whose sovereignty will be also limited by its relations to them. In a unified State they will be local authorities, subordinate to and deriving their powers from a central and sovereign government. Under either alternative there must be a division of duties, revenues, debts and departments between central and local administrations. We are now in a position to consider how this division would be brought about, first in the event of federation, and, secondly, in the event of unification.

In case of federation division of duties must be settled in the constitution.

A federal constitution is in the nature of a contract between existing States; and the States are always to be considered as the units of which it is composed. If the union of South Africa is to be effected on federal lines, the existing colonies will covenant with each other to establish a joint government and to transfer to it certain specified functions, retaining the rest of the functions of government to themselves. It will therefore be necessary to frame a list showing what functions are to be retained by the States and what other functions are to be assigned to the federal government. The material from which such a list can be compiled is summarised in statements Nos. XX. and XXI.

Division of revenues must also be settled in constitution.

The next step is to consider what sources of revenue are to be transferred to the federal government to pay for the duties assigned to it. But we cannot merely take a slice of the present revenues now levied by the existing colonies and transfer it to the federal government. The fundamental basis of a federation rests not on a division of funds, but on a division of taxing powers. We have to ensure that the federal government and the States will not in future draw simultaneously on the same sources of taxation. We must, in fact, in our Constitution provide a separate sphere of taxation for each. To do this we shall have to classify the sources of taxation, and the federal government must be forbidden to impose taxes

of the kind reserved to the States, and vice versa. The division of revenue sources must be just as rigid and permanent as the division of duties. It is, of course, difficult to ensure an exact correspondence between the duties and sources of revenues assigned to each; but inequalities of this kind may be rectified by the device adopted in Canada and Australia of obliging the federal government to make certain grants to the States.

Division of debts can remain for future settlement.

Besides duties and revenues, there will be certain assets such as railways, harbours, and telegraphs, to be transferred from the States to the federal government, and corresponding adjustments have therefore to be made in respect of the debts contracted by the States in acquiring those assets. The question of debts offers no difficulty, however, for the federal government could be rendered liable to the four States for the debt charges represented by the assets transferred to its management. The question of consolidating the colonial debts, raising, as it must, under federation, the difficult question of compensation, could then be postponed, as it was in America and in Australia, for subsequent settlement between the States, and would not embarrass the attainment of union.

Division of Civil Service.

The machinery of the federal government has also to be constructed with material drawn from the existing colonial services. On this subject there is nothing to add to what has been said in Chapter XVII. As we have shown in Chapter XVIII. that a federal government cannot act through local authorities,

a federal constitution has not to provide for the transfer of any part of these administrative agencies.

When we have settled the distribution of administrative duties and revenues, we may then proceed to consider the political character of the federal and State governments, and of their relations to one another. We are not, however, in a position to pursue this subject further, until we have studied the relations of the governors, cabinets, and parliaments to each other, as well as questions of franchise, which are the subjects of Part IV. of this book.

Political structure of federation must next be considered.

It is scarcely possible in any case for a Constitution to do more than provide for the establishment of a federal legislature and executive, and for the exercise by that government of certain powers. To begin with, the State governments must continue to exercise those powers as at present. The actual transfer from the States of the business to be centralised must be left to the federal government to effect for itself, and in most cases the transfer will involve the enactment of consolidating laws by the federal parliament. This will be better understood by reference to the account which Mr. Garran has given us in the next chapter, of the process whereby the work of union was consummated in the Commonwealth of Australia. Mr. Garran, who is one of the principal officials of that government and the leading authority on this subject, has there shewn us the process in operation. He explains to us that it is still going on, and will

Federal government must be left to take over duties, revenues and staff from States by legislation or otherwise.

not be completed for years to come. Federation means in fact the creation of a central government with power to centralise and unify certain limited parts of the law and administration. Even when it is established, the work of assuming its powers, before it can exercise them, may occupy many years.

The Pathway to Unification.

Under unification a similar process is carried further.

Let us now suppose that it is desired to unify instead of to federate the four colonies. Just as with federation, we must begin by establishing a South African governorship, cabinet and parliament. In the case of unification, however, this government would take the place of the four governors, cabinets and parliaments which at present exist. This would be the first step. The rest of the process might be effected in some such manner as the following. The whole machinery of the four colonial governments would remain in their present offices, administering the existing laws and continuing to do their work as before. One cabinet minister would be in charge of four co-ordinate departments operating from four different centres. He himself would administer from one of those centres through parliamentary under-secretaries resident in the other three. The under-secretaries would naturally be chosen from members of parliament elected in the colonial area for which they had been appointed to act. Each of the four administrations would continue to frame their own estimates; only they would be submitted by

one cabinet to one parliament instead of by four cabinets to four parliaments. To begin with the estimates would be drawn in five divisions, one for the expenses of the new central government which we will call the South African division, and one for each of the four colonies as they now are. These we will call the colonial divisions. There would, in fact, to begin with be five administrations, one central and four local, but all subject to the orders of a single government.

Central government would then begin by unifying those duties which do not require agency of local authorities.

The national government would then proceed with the work of unification by gradual steps. The administration of railways posts and customs could be detached from the four administrations and centralised almost at once. Other services, such as defence, which obviously requires to be centralised, and could not in any case be administered through the agency of local authorities would be taken next. As these services were centralised their cost would be transferred from the four colonial divisions of the budget to the South African division. Such public servants as were required for the central administration would be brought up to the offices of the central government. The different administrative laws relating to each particular service would have to be replaced by one.

Process more difficult where intervention of local authorities required.

The process of unification is much more difficult when the government begins to apply it to functions which have to be administered through local bodies; for it will have to create these agencies first of all. No one should at-

tempt to institute elective local authorities, define their powers, delimit their areas, or devise for them a system of local taxation, without a searching enquiry into local conditions throughout South Africa. When however this has been done, the government would be in a position to transfer functions, such as education, from the four colonial administrations, partly to the central administration and partly to the local authorities. Education may be taken as a case in point. The government would begin by consolidating the educational laws of the four colonies into one South African law. Clauses dealing with language and other contentious matters might remain as they are for the different colonial areas, and the widest latitude might be left in these respects to the local authorities. Such elasticity is the virtue of unitary government. The financial and administrative relations of the central government to the local authorities would need to be settled on more uniform lines, but even here differences would be made to suit different kinds of communities, urban or rural, backward or progressive. But generally speaking detailed administration would be transferred to the local authorities, while the duty of general supervision would be centralised in the offices of the national government. The necessary staff would be concentrated there from the offices of the four colonies, while the remainder would be drafted into the service of the new local authorities. Simultaneously the cost would be transferred from the four col-

onial divisions to the South African division of the estimates, partly in the form of the salaries and other expenses of the central administration and partly in the form of grants to the local authorities. Each of the services, in which the agency of local authorities is required, would then be dealt with one by one in the same way. As the process continued, the South African division of the budget would be swollen by successive transfers from the four colonial divisions which would dwindle away until they finally disappeared.

Unification of revenue.

At the same time the government would have to proceed with the task of reducing the taxes of the four colonies to a uniform basis. To begin with it would probably be best to leave the four colonial treasuries to collect the taxes as at present, to meet the expenses of the colonial divisions of the budget. The expenditure provided for in the South African division, which would be small at first, could be defrayed from customs, which are already levied on a uniform scale. The balance would be distributed meantime amongst the four colonial divisions. Merely as a question of equity the other colonial taxes should be replaced by uniform South African taxes as soon as possible. But again, to consolidate the four colonial systems of taxation into one uniform system is a task which should only be attempted as the result of exhaustive enquiry.

Unification of debt.

Under unification the liability for all colonial debts would of course be assumed by the national government. The burden of these

debts is represented by the taxes which each colony must pay to meet the annual charges upon them. The same operation, therefore, which consolidates the taxes of South Africa on a uniform basis will also effect a uniform distribution of the burden of debt.

Unification of civil service.

The same deliberation which is needed in establishing local authorities, and in consolidating administrative and revenue laws, should also be used in the redistribution of the colonial departments. Transfers of officers to the central government and the local authorities from the colonial administrations should not be haphazard, but made on a plan well considered and carefully prepared.

Preparation of schemes by commission.

These various operations will have to go on side by side and in strict relation to one another, and the preparation of the schemes should be entrusted to a strong commission, including the ablest civil servants of the four colonies. The chairman should be a man of high capacity, with a wide range of administrative experience, and not identified with any one part of South Africa. The commission should be large enough to divide itself into committees, which could work simultaneously. One committee would frame a scheme for the establishment of local authorities, a second would draft bills for consolidating administrative laws, a third committee would draft bills for consolidating revenue laws, a fourth would prepare a scheme for giving effect to the corresponding reorganisation of the public service. During the period of reconstruction, the work

of civil service commissioners would be done by this commission. It would be the duty of the commission as a whole, under the guidance of its chairman, to supervise the work of the several committees and bring their schemes into harmony with one another. The results of its labours would then be presented to the national government in a series of schemes or reports. The government would consider and give effect to them one by one, partly by means of consolidating measures enacted by the legislature, partly by administrative action. The work of unification would thus proceed without hurry, and subject to the fullest and most public consideration .

Technical difficulties of unification less than those of federation.

It will thus be seen that the framing of a unitary constitution is a much simpler process than the framing of a federal constitution. The latter must include a division of all the duties and revenues between the States and the federal government. Such divisions between central and local authorities are comparatively easy to make, as experience directs from time to time. But to sit down and make workable divisions which will be binding for all time, or at least alterable only by a formal revision of the constitution, is a difficult and precarious task. Unification simply means the establishment of one governorship, cabinet and parliament to take the place of four; and whatever obstacles the jealousies, suspicions, and prejudices of men may present, it is a constitutional operation of a simple kind.

Need for dealing with administrative before political problem.

In this view of the results so far attained in our enquiry we have confined ourselves exclusively to the administrative problem. We have shewn that the first step must consist in the establishment of a central government whether federal or unitary. But we have offered no suggestion as to what the political character of that government should be. It is of vital importance to prepare a plan shewing how the work of government is to be organised, before we begin to consider how the people of South Africa are to control the doing of it. We should decide first of all what the administrative needs of the country are, and then try to frame a system of political control adapted for dealing with them. A constitution capable of gathering up the strange intractable threads of this country and of weaving them into the fabric of one national life is not to be constructed from plans prepared for Europe, America, or Australia. While studying their models with profound respect, let us still remember that every detail of our own instrument should be fashioned to suit the material of South Africa. Its mechanism must be conceived in our own brains and wrought with our own hands for the work before us; and we must so contrive that it can still be altered and enlarged to meet the growth and change of future years. It is for this reason that in the course of our enquiry we have concentrated our attention on the administrative work of government first of all, and have left its political aspects for later consideration.

CHAPTER XX.

The Starting of a National Government in Australia.*

Establishment of central government a gradual process.

The establishment of the Commonwealth of Australia involved the setting in motion of the machinery of a complete new Government —with legislative, executive, and judicial organs—distinct from, and supplementary to, the six State Governments already existing. It is obvious that all this new machinery could not be set up, and started in full working order, in a single day. It was easy to proclaim that the Constitution of the Commonwealth should take effect on a certain day; but on that day, and for many days after, only very small instalments of actual political union could be achieved. Departments had to be organised, and laws had to be passed; and in order that laws might be passed, and the Executive Government be given the representative character which would enable it to exercise its functions, it was first of all necessary that elections of members of the first Commonwealth Parliament should be held, and that the Parliament should meet and settle down to business.

* Contributed by Mr. R. R. Garran, M.A., of the New South Wales Bar, author of "The Coming Commonwealth," and joint author of "The Annotated Constitution of the Australian Commonwealth."

Constitution provided for transitional stage.

The process of starting the machinery had received a good deal of attention from the framers of the Constitution; and the Constitution itself, and the Imperial Act in which it was embodied, contained numerous provisions relating to the initiatory period, and designed to enable the federal machinery to be set in motion smoothly and gradually. These provisions may be classified generally as follows:

1. Provisions for the performance of certain preliminaries before the actual establishment of the Constitution, to come into effect immediately upon the establishment.
2. Provisions for the gradual transfer to the Commonwealth of certain functions hitherto belonging to the States.
3. Provisions supplying the temporary want of federal legislation by means of,—
 (*a*) temporary legislation laid down by the Constitution itself, "until the Parliament otherwise provides," and
 (*b*) rules for the temporary adaptation of State laws to federal requirements.
4. The general scheme of the Constitution, which, in respect of most of the matters within the legislative powers of the Commonwealth Parliament, allowed to the States a concurrent legislative power so far as the Commonwealth Parliament had not occupied the field.

The nature of these various provisions, and the way in which they operated, will appear more clearly, and in greater detail, from a historical summary of the steps by which the Constitution, and the great departments of the Federal Government, were actually set in motion.

A historical summary the best illustration of the nature and operation of these provisions.

Proclamation of the Constitution.

Appointment of a day for the establishment of the Commonwealth.

The Constitution Act enabled the Queen to declare by Proclamation that, on and after a day therein appointed, the people of the several Australian Colonies should be united in a Federal Commonwealth. The Commonwealth was to be established, and the Constitution of the Commonwealth was to take effect, on the day so appointed; but before that time the Queen might, at any time after the proclamation, appoint a Governor-General of the Commonwealth.

Appointment of a Governor-General.

By proclamation dated the 17th September, 1900, the Queen appointed the 1st January, 1901, for the establishment of the Commonwealth. By letters patent of the 29th October, 1900, the Queen purported to constitute the office of Governor-General—a step which appears to have been unnecessary, as the office had already been constituted by the Constitution enacted by the Imperial Parliament; and by Commission of the same date the Earl of Hopetoun was appointed to the office of Governor-General.

Arrival of the Governor-General. His first step to secure responsible advisers.

Lord Hopetoun arrived in Sydney on the 15th December, 1900—seventeen days before the day fixed for the establishment of the Commonwealth; and he promptly set to work to secure responsible advisers, in order that, when the appointed day came, his Executive Council might be immediately appointed and sworn in. He first, on the 19th December, sent for Sir William Lyne, who was then Premier of New South Wales, the senior and most populous Colony of the group. Five days later Sir William Lyne declined the responsibility, and Lord Hopetoun, in accordance with Sir William's advice, sent for Sir Edmund Barton, who had been leader of the Convention which framed the Constitution, and was the recognised leader of the federal movement in Australia. Sir Edmund Barton accepted the task, and a few days later announced to His Excellency the names of the members of the proposed administration. It was recognised as a desirable principle—though not expressly required by the Constitution—that each State of the Commonwealth should be represented in the Cabinet. The maximum number of Ministers of State provisionally fixed by the Constitution was seven; but in addition there were summoned to the Executive Council two "Ministers without portfolio"; the whole list being as follows:

The constitution of the proposed cabinet. Every state represented.

From New South Wales: Sir Edmund Barton (Prime Minister and Minister of External Affairs); Sir William Lyne (Minister of Home Affairs); Mr. R. E. O'Connor (Vice-

President of the Executive Council, without portfolio). From Victoria: Mr. A. Deakin (Attorney-General); Sir George Turner (Treasurer). From Queensland: Sir J. R. Dickson (Minister of Defence). From South Australia: Mr. C. C. Kingston (Minister of Trade and Customs). From Western Australia: Sir John Forrest (Postmaster-General). From Tasmania: Mr. N. E. Lewis (without portfolio).

The offices of State Minister and Federal Minister found incompatible

Many of these gentlemen were at the time Premiers of their respective States; others were State Ministers. It was however perceived from the outset that the offices of State Minister and Federal Minister were hardly compatible; and the State offices were all resigned before Ministers took their seats in the Federal Parliament.

So far, all was only preliminary; no portfolios could be created or Ministers appointed, till the "appointed day," for which everything was now in readiness.

Arrival of the appointed day (Jan. 1, 1901). Executive Council appointed, the seven great Departments of State established, and the Ministers appointed to them.

On the 1st January, 1901,—the first day of the twentieth century—at a brilliant ceremonial held in the Centennial Park, Sydney, the Queen's Proclamation and Letters Patent were first read; the prescribed oaths were administered to the Earl of Hopetoun by the Lieutenant-Governor of New South Wales; and the Governor-General made proclamation that he had that day assumed the offices of Governor-General and Commander-in-Chief of the Commonwealth of Australia. The nine members of the Executive Council were then

appointed and sworn in. At a meeting of the Executive Council held the same day, the seven great Departments of State of the Commonwealth were established, and the seven Ministers of State were appointed to administer them. Lastly, the first number of the *Commonwealth Gazette* was published by authority, in which public notification was made of the above proceedings.

The First Instalment.

But only the departments of Customs and Excise were actually transferred the first day.

Thus, on the first day of January, 1901, the Commonwealth was fairly launched, with a Governor-General at the helm and an Executive Council to advise him; with seven departments created—namely, the Departments of External Affairs, the Attorney-General, Home Affairs, the Treasury, Trade and Customs, Defence, and the Postmaster-General. But the only actual transfer of departmental functions which took place on that day was with respect to the departments of Customs and Excise. And even with regard to them, the only change was that the immediate control passed to the Commonwealth Government, and the revenue from that moment went into the Federal Treasury, to be dealt with in accordance with the Constitution. The six State Tariffs continued in force as before, until such time as the Federal Parliament should frame an Australian tariff; inter-state duties continued to be collected on the State borders; the State Customs laws and regulations, and the State Public Service Acts so far as they

And the State tariffs and inter-State duties remained in force.

affected the transferred officers, continued in force with the substitution of Federal for State authorities; and every officer of Customs and Excise continued to perform his duties as before, except that he was now an officer, not of his State, but of the Commonwealth (see Sections 69, 70 and 84 of the Constitution).

Revenue and Expenditure.

Safeguards against undue expenditure by the Commonwealth. Three-fourths of the customs and excise returned to the states.

The Customs and Excise Revenue collected by the Commonwealth was of course far in excess of the needs of the Central Government, and the Constitution provided that the unexpended balance of it, from month to month, should be paid over to the States in which it was collected. It would have dislocated State finances if the State Treasuries had been cut off suddenly from this source of revenue. To guard against undue expenditure by the Commonwealth, it was provided by the Constitution (Sec. 87) that for a period of ten years, and thereafter until the Commonwealth Parliament otherwise provided, not more than one fourth of the net customs and excise revenue should be applied by the Commonwealth towards its expenditure, and that the remaining three-fourths or more should be returned to the States (unless applied by the Commonwealth to the payment of interest on State debts taken over by the Commonwealth under powers conferred by the Constitution).

Provision in the Constitution empowering the

The expenditure of Commonwealth money can only be effected under appropriation made

by law. But to meet the exigencies of the period which must elapse before the first Parliament could meet and pass an Appropriation Act, it was specially provided in the Constitution (Sec. 83) that, until the expiration of one month after the first meeting of the Parliament, the Governor-General in Council might draw and spend such monies as might be necessary for maintaining any department transferred to the Commonwealth, and for holding the first parliamentary elections. The Commonwealth Government was thus from the outset provided, not only with revenues, but with certain powers of expenditure to meet its most urgent necessities.

Governor-General in Council to spend Commonwealth monies, pending the election of a Federal Parliament.

Appointment of Officers.

The Constitution (Sec. 67) vested in the Governor-General in Council (pending other provision by the Parliament) the power of appointing and removing Commonwealth officers. It was thus possible from the outset to appoint from time to time such officers as might be necessary in the preliminary organisation of the different departments. Pending Parliamentary legislation, the number of such appointments was, as a matter of fact, confined to the minimum necessary for immediate purposes.

Appointment of Officers provisionally vested in the Governor-General in Council.

Transfer of other Departments.

In addition to the Customs and Excise Departments, the transfer of which, as already mentioned, took place at the time of the establishment of the Commonwealth, the Constitu-

Other departments transferred to the Commonwealth, but State regulations still in force.

tion empowered the Governor-General, by proclamation, to direct the transfer to the Commonwealth of four other sets of State departments, namely:—Posts, Telegraphs and Telephones; Naval and Military defence; Lighthouses, Lightships, Beacons, and Buoys and Quarantine. Accordingly by proclamations dated respectively 14th and 20th February, 1901, the State Departments of Posts Telegraphs and Telephones, and of Naval and Military Defence, became transferred to the Commonwealth on the 1st March, 1901—two months after the establishment of the Commonwealth. The effect of these transfers was, for the time being, similar to that already described in the case of the Customs and Excise departments. The control passed to the Commonwealth; but State laws and regulations remained in force with the necessary substitutions. No proclamation was made with respect to the departments of Lighthouses, etc., or Quarantine, as difficulties presented themselves with regard to the transfer of these services in the absence of federal legislation; but a comprehensive Quarantine Act has recently (1908), been passed by the Federal Parliament; and a bill providing for the transfer of lighthouses, etc., to the extent thought necessary, is likely to be dealt with in the near future.

Parliamentary Elections.

Provisional arrangements employed in the

One of the first matters to engage the attention of Ministers was the holding of the

Election of the first Senate and House of Representatives.

elections for the two Houses of the first Federal Parliament. The Parliament, when elected, had power to establish a uniform federal franchise, and to make laws to regulate federal elections—except that power was reserved to the State Parliaments to make laws for determining the times and places of elections of senators. But for the purposes of the first election, it was provided (Secs. 10, 30,) that the franchise and electoral laws of each State should be applied in that State. Each State Parliament was also empowered (Sec. 29) pending provision being made by the Commonwealth Parliament, to determine the electoral divisions in the State for the House of Representatives, and the number of members to be chosen for each division. In the absence of any provision, each State was to be one electorate. Four of the States, in the exercise of powers conferred upon them, created single member constituencies; but in South Australia and Tasmania no electoral divisions were made, and therefore at the first election these two States each formed one electorate. For the Senate each State was one electorate returning six Senators.

The elections for both Houses were appointed to take place at the end of March. In accordance with the provisions of the Constitution, the writs for the Senate were issued by the Governors of the several States, and those for the House of Representatives by the Governor-General. The writs were duly returned, and on the 9th May the Parliament

was opened by the Duke of York under a special Commission from the King.

First measures passed by the new Parliament

The Parliament set to work immediately. The first necessary piece of legislation was an Appropriation Act to authorize the expenditure of money. The next important measure was an Audit Act, to provide for the proper keeping and checking of the public accounts of revenue and expenditure. Then followed a series of Customs and Excise Acts—machinery acts providing a uniform system of collection and administration, and superseding the State Acts in that regard, though the State tariffs still remained in operation. And then came a Post and Telegraph Act, providing for a uniform administration of the postal and telegraphic services, and superseding the State laws for the most part—though for reasons connected with the financial provisions of the Constitution, it was not found practicable for the time being to unify the postage rates, or to provide for the issue of postage stamps having currency throughout Australia.

Inter-State Free Trade.

Chief work of the first session, the establishment of a uniform tariff for the Commonwealth and of the inter-State Free Trade.

But the great work of the first session, which lasted from May, 1901, to October, 1902, was the framing of the first uniform customs and excise tariffs for the Commonwealth. The departmental preparation of the customs tariff necessarily occupied a considerable time. It was not introduced into the House of Representatives till 8th October,

1901; and after nearly a year's consideration by the two Houses, it was finally passed into law on the 26th September, 1902. From the date of its introduction, however, in accordance with Constitutional precedent, the proposed uniform duties were collected by the Customs Department, and the collection of duties on the inter-state transfer of goods ceased. Thus from the 8th October, 1901, there came into force that provision of the Constitution (Sec. 92) which declares that "on the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free."

One temporary exception to the principle of the inter-State Free Trade.

The Constitution however provided for one temporary exception to the principle of inter-state free trade, Western Australia, owing to the extent of her mining industries and the immaturity of her development in other branches of production, was collecting a considerable proportion of her Customs revenue upon imports from other States; and to prevent the dislocation in her finance which it was feared would result from the sudden stoppage of this source of revenue, the Constitution made special provision for the continuance of Customs duties on the transfer of goods to Western Australia from the other States, according to a sliding scale which involved an annual reduction of the rates of those duties till they vanished at the end of five years. It was therefore not until the 8th October, 1906, that the principle of inter-state

free trade from one end of the Commonwealth to the other was completely realized.

The imposition of a uniform excise tariff, superseding the excise tariffs of the States, was contemporaneous with the imposition of the uniform customs tariff.

Commonwealth Public Service.

Establishment of a Commonwealth Public Service Act.

The session of 1901-2 also saw the establishment of a Commonwealth Public Service Act. We have seen that theretofore the officers of departments transferred from the States to the Commonwealth had continued, though under Commonwealth control, to be subject to the public service laws of the several states from which they were transferred; whilst there was no public service law at all to govern the rights, obligations, tenure and discipline of the new officers of the Commonwealth. By the enactment of the Commonwealth Public Service Act, and the consequent supersession of the State Public Service Acts so far as Commonwealth officers were concerned, the public service of the Commonwealth was welded into one homogenous whole; though certain inequalities resulting from the existing and accruing rights, under State laws, of individual officers, will only gradually disappear.

Electoral System.

Establishment of a Federal Franchise.

The last work of the session was the establishment, on a national basis, of the electoral franchise for the Commonwealth Parliament,

and the law relating to elections for that Parliament; the diverse laws of the States under which the first federal Parliament was elected being thus superseded so far as future federal elections were concerned.

The Federal Judiciary.

Second Session. Establishment of the "High Court of Australia." The functions.

In the second session of the Parliament, in 1903, the High Court of Australia, contemplated by the Constitution as an essential part of the machinery of the federal government, was constituted. It is not only a general Court of Appeal from the judgments of the Supreme Courts of the States—and a Court whose decisions are final except so far as the Privy Council may grant special leave to appeal in any particular case; it has also important original jurisdiction in certain cases which are, by reason of the subject matter or the parties, of a specially federal or interstate nature; and it has special functions as the final interpreter of the Constitution in questions relating to the distribution of constitutional powers between the Commonwealth and the States—even the Privy Council having no power to grant special leave to appeal from its decisions upon questions of that character.

Defence.

The Defence Act.

In 1903 also the Defence Act was passed which effected the national organisation, under a unified system, of the last of the "transferred services"—the departments of

naval and military defence—and superseded, as in the case of the other transferred departments, the State Acts and regulations under which the Commonwealth Defence Forces and the Defence Department had hitherto been administered.

Further Development.

Recapitulation.

Before the end of the year 1903, therefore, the initial organisation of the Commonwealth was complete, in all essential points. The Executive Government, organised with seven departments of State, was working under the system of ministerial responsibility to the Commonwealth Parliament; the Parliament itself was in full working order, with a franchise and an electoral system of its own; the Federal Judiciary was constituted and had entered upon its duties; the departments transferred from the States to the Commonwealth were governed and regulated by federal law; and the Commonwealth Public Service was similarly controlled and administered.

Progress made, 1901-1907. Large extent of ground still to be covered.

The rest is simply the story of the gradual process of the occupation by the Federal Parliament of the field of power assigned to it by the Constitution. It is hardly necessary to say that, in the seven years which have elapsed since the Federal Parliament entered upon its duties, only a comparatively small part of that field has been covered. Much indeed has been done, but much more remains to be done. Acts have been passed relating to Naturalization and Immigration; Patents, Trademarks,

Copyrights and Industrial Designs; providing for Census, Statistics and Meteorological observations; dealing with Conciliation and Arbitration for the settlement of industrial disputes extending beyond the limits of any one State; the service and execution throughout the Commonwealth of the process and judgments of State Courts; and many other subjects of common concern. Under the wide powers of legislation conferred by the Constitution upon the Federal Parliament, many other subjects of vast importance remain to be dealt with; and the process is likely to be continuous for many years to come.

Extent of the limitation imposed by the legislative powers of the Commonwealth on the State legislatures.

But meanwhile the fact that the Commonwealth Parliament has power to legislate as to a given subject does not affect the validity of existing State legislation on the subject, and does not prevent the State Parliament from adding to or altering their legislation from time to time. Few of the Commonwealth powers of legislation are exclusive; and those few have relation to matters which in their nature can only be dealt with by the Commonwealth Parliament. Generally speaking, the only limitation on State Legislative powers is that they must not be exercised in a way which is inconsistent with the Constitution, or with laws passed by the Commonwealth Parliament. State Legislative powers and State laws are expressly preserved, except to the extent of such inconsistency (Sections 107, 108); and it follows that the establishment of the Commonwealth creates no hiatus, in respect

of matters within the general legislative power of the Commonwealth Parliament, until such time as the Commonwealth Parliament has leisure to deal with them.

The assumption of functions by the Commonwealth, a gradual process.

Thus the process of assumption by the Commonwealth of governmental powers and functions has from the first been, and will continue to be, a gradual one. The Federal Government was not encumbered at the outset with a vast load of duties and obligations which it could not be immediately ready to undertake; it was empowered to assume them piecemeal, from time to time, as opportunity offered, and as the development of federal organisation allowed. In no other way would it have been possible to inaugurate the federal system without jarring and confusion.

PART IV.

THE MACHINERY OF POLITICAL CONTROL.

CHAPTER XXI.

The Subject Matter of Politics.

Colonial institutions must be interpreted in the light of the British Constitution of which they are reproductions.

Parliamentary Government is an original product of the British Isles, where a comparative immunity from the wars which agitated the continent of Europe enabled it to develop.* From England the seed has spread in the course of the last two centuries to very different parts of the world, and has reproduced itself in a variety of different forms. In the case of the larger colonies of the British Empire it is as though cuttings had been taken from the original tree and planted in their soil; for each colonial constitution is practically that of the United Kingdom, with this important difference—that in order to extend its customs to new countries it has been necessary to write them down. But while these documents differ in many points of detail, they follow the same principles, and cannot be understood apart from the history of the parent constitution. The account of parliamentary government which we are about to give may be applied, therefore, with equal truth to the original

* Parliamentary institutions developed independently in Hungary and Sweden, but other countries have been little influenced by their example.

growths and its later off-shoots, and we need not as a rule interrupt the narrative to discriminate between the two.

Genesis of the statute.

Much attention has been paid by modern jurists to the important part which the use of writing plays in the development of law. In primitive communities the relations of men to each other are regulated by custom, and they look to their ruler whether he be priest, king, or tribal chief to declare what the customs are. But so long as the state of the law depends on the verbal utterance of the ruler he can declare and interpret custom in whatever way may best suit his own purposes from time to time. A great advance in the direction of personal liberty is made when he is obliged to set down in writing the rules by which he proposes to abide. By the publication of the law the ruler binds himself and limits his own power. The law, however, whether written or otherwise, continues to be developed by decisions given, either by the ruler or by the courts he has established on cases brought before them. From time to time this case law develops rules which are found to be out of harmony with the needs or sentiments of the people. The judges must then be instructed to adopt some new principle, and the whole community whose affairs are to be regulated must be told in clear and definite language how far it is proposed to depart from existing rules of law. This can only be done by declaring the new rule in written form. In

other cases industrial or social conditions may have developed too fast for the process of legal development in the courts to have kept pace with the change, and a deliberate addition to the law must be made. Here again the nature of the addition must be declared in writing.

Constitutional government begins when government must secure some form of popular approval before enacting a statute

Documents of this kind used by Government for declaring, changing or extending the law are described as statutes. Law in the form of custom or precedent is in the condition of a fluid, and cannot be deliberately shaped by the government to meet the needs of the community until it is crystallised in statutory form. But as soon as custom or doctrine is declared in writing, the exact terms of the declaration can become the subject of discussion between any number of people and be used as a record of decisions at which they arrive. When, however, it is recognised that statutes cannot be enacted by government until their terms have been discussed and settled with some representatives who speak for those who will be called upon to obey them, the first step in the direction of popular government is made. The second step is to secure that revenue cannot be collected, and the third that it cannot be spent, except in accordance with the terms of a statute. The process of framing estimates described in Chapter XVI. means that the government prepares a list which shows not only the functions which it proposes to undertake, but the scale upon which it proposes to undertake

them. That list is then discussed item by item between the government and the representatives of the people, and when agreed upon in all its details, is ratified by a statute called the Appropriation Act which limits the government to that programme with the force of law.

The final step is to reduce the methods of administration to statutory form. Genesis of the administrative statute.

A further extension of popular control is attained when government is expected to reduce the method in which each principal function is to be executed, to statutory form. When government has decided to assume some new duty, the matter is entrusted to a minister, who in consultation with his permanent officials, frames an estimate and plan of action for discussion by the cabinet. When the scheme has been finally adopted by the cabinet, the estimate is brought before parliament, and in supporting it the responsible minister explains in detail the proposed plan of action. A discussion follows, not only in parliament, but in the press outside, and from this discussion the minister is able to form a more accurate judgment of the trend of public opinion. When the estimate is passed, his administrative staff at headquarters proceed to execute the new function. In other words, they explain the plan of action to the officers in the district, to whom the actual execution of the details is committed, and give them directions as to how those details are to be carried out. In doing so they will consult these officers, who are in closer touch with the actual facts than themselves,

as to how each detail should be arranged, and communicate the results for the information of the minister. He on his part will exercise a general supervision over the whole of the operations in order to see that they are conducted on such lines as will be acceptable to parliament when next they meet. The experience of actual administration gives everyone concerned in it a closer acquaintance with the facts, and is certain to modify the plan of action as originally conceived. In many cases the officials will find that they cannot give effect to the purpose of government unless they are authorised to coerce recalcitrant individuals who are opposed to it. In order to establish a certain standard of education public officers must have power to compel parents to send their children to school. In other matters they will find that the execution of the plan requires them to do things which the ordinary law forbids them to do. In stamping out cattle disease for example, the officials may find it necessary to seize and kill infected animals, and bills are prepared to provide the necessary powers. Parliament, however, habitually jealous of the invasion or restriction of private rights, will only grant extraordinary powers when convinced of the necessity, and often hedges such grants with minute directions as to how they are to be exercised. In this way the administrative statute comes into existence, examples of which may be seen in the education laws of any of the four Colonies.

Royal prerogative and constitutional custom sometimes reduced to statutory form.

In other directions the statute law is used to supersede the original powers of government and to limit the royal prerogative. Formerly the Crown exercised the right of granting municipal privileges to towns by charter: but powers of local self-government are now invariably delegated and defined by Acts of parliament or by orders made by ministers in accordance with such Acts. The constitution itself is also the subject of statutory change.

The principal subject matter of politics consists in settling what changes are to be made in or additions to these various kinds of statutes.

In England the constitution is based on custom, but in extending these customs to the colonies it has been necessary to reduce them to written rules. But in either case any deliberate changes which require to be made are discussed by the government and parliament, and expressed in statutory form.

When the process of reducing customary practice to written form has continued for some time, the statute law covers so much ground that some of its terms have to be altered before any important change of internal policy can be made. The making of these changes is largely the subject matter of politics, and in Part IV. we propose to consider the machinery by which they are effected under the institutions of the self-governing colonies of South Africa. We must examine first of all the different parts of the various machines before we proceed to enquire how they work.

The political machinery of the four colonies.

In each of the four colonies political control is vested in a government which consists

of a governor, a group of ministers, and a legislative council and a house of assembly. The lower houses are all elective, and so is the upper house in the Cape Colony, while the three other legislative councils are nominated by the governor. There are many differences of detail in the provisions establishing governorships, ministries and parliaments which may be understood by reference to the tabular statements appended to this book. The main provisions relating to the governors are set forth in Statement No. XXXI. The number and character of the portfolios in each ministry will be found by reference to Statement No. III. appended to Part I. The number of members in each house of parliament is shown in the same table. Further details as to the constitution of these houses are given in Statement No. XXXII.

Statement No. XXXI.

Statement No. III.

Statement No. XXXII.

The nature of the electoral franchise and the method of registration in each colony is given in Statement No. XXXIII. The distribution of voters into constituencies and other details relative thereto are given in Statement No. XXXIV. The distribution of voters and population into constituencies is, for greater clearness, shown in graphic form by means of diagrams. The geographical distribution of voters can be arrived at by comparing the diagrams with the map, appended to Part I., and with the five detail maps of the urban constituencies, which together with the diagrams will be found in the

Statement No XXXIII.

Statement No. XXXIV.

Parliamentary diagrams.

Plate No. I.

Plates Nos. III. to VII.

pocket at the end of the Book. In the next succeeding chapters we shall endeavour to ascertain how, through the medium of all this machinery, government is controlled by public opinion in the performance of its functions. And in doing so we must try to get at the facts themselves, and not allow their real nature to be disguised from us by the forms in which they are clothed.

CHAPTER XXII.

The Sovereign.

Meaning of Sovereign and Parliament in these Chapters.

For the sake of brevity the word "Sovereign" will be used in this and the following chapters to indicate the governor of a colony as well as the King, unless from the nature of the context it is plainly used in some other sense. Similarly the word "parliament," which in its technical meaning includes the sovereign, will be used in its popular sense as signifying the two legislative chambers.

Ministers and not the Sovereign are responsible for the government carried on in his name.

In the legal theory of the constitution it is the Sovereign who makes as well as executes the laws. It is in his name that parliament is called into existence, opened, prorogued or dissolved, and to his person that the formal ceremony of state is attached. But except in certain matters and on certain special occasions, he is bound to act on the advice of his ministers, and though cognisant of all they do in his name he is not responsible for it.

The Privy Council or executive council at which advice of ministers is given to Sovereign is merely a machine for promulgating the acts of government.

In theory the King is supposed to receive the advice of ministers when presiding at the Privy Council and a governor when presiding at his executive council. In practice, however, these bodies only meet for the purpose of placing on record and giving legal effect to

decisions already arrived at by ministers whether in cabinet or otherwise. The personnel of the executive council of the Cape Colony, like that of the Privy council in England is not even identical with that of the cabinet; for it includes the former as well as the present ministers of the Crown. But only members of the cabinet for the time being are summoned to its meetings, though certain personages who have never been members of a cabinet are summoned to the meetings of the privy council.

When questions of changing the de facto government arise, the Sovereign may be called upon to act on his own responsibility.

At any moment, however, a political crisis may arise when the Sovereign may be called upon to decide for himself whether he shall dissolve parliament or refuse to do so, or whether he shall dismiss a government and call upon the leader of an opposition to form another. In such delicate and important matters it may be his duty to reject the advice of his existing ministers. In the theory of the constitution, however, the incoming minister is responsible for what he does. We shall revert to this subject later, when discussing the relations of the Sovereign to the cabinet and parliament.

CHAPTER XXIII.

The Ministry.

The Sovereign is the legal, but the prime minister the de facto ruler.

Except under abnormal conditions referred to at the close of the last chapter, the actual ruler of the country is not the Sovereign but the prime minister, and the real council of state is not the privy council nor the executive council but the cabinet. This body is composed of ministers selected by the prime minister to superintend on his behalf the departments which he cannot undertake to administer himself. In some cases the prime minister assigns all the portfolios to his colleagues and confines himself to superintending their work.

Enquiry as to real nature of the cabinet.

As we have seen it is the cabinet which decides what action the Crown is to be advised to take, and those decisions are merely ratified and recorded at the meetings of the executive council. As therefore the cabinet is the virtual government of the country it is necessary that its real character should be understood.

All administrative control finally culminates in the prime minister.

As we have shewn in Chapter XXI. there is a tendency under British institutions to prescribe in the form of statutes how the various duties of government are to be performed. But however precise the statutes

may be, some discretion has still to be left to the officers charged with the duty of administering them. Though the law relating to stock disease may prescribe with some minuteness of detail how the local inspector is to act when redwater or rinderpest appears in his district, much will remain to his own discretion. When in doubt, he will refer to the permanent head of his department at the seat of government, who may reply on his own initiative with such instructions as he believes the minister in charge of the department would approve. If, however, an issue of importance is raised, the permanent head refers to the minister and obtains instructions. In some cases the minister himself will have to refer to the prime minister in cabinet council, and must abide by his decision, even though he disagrees with it. Not only must he give effect to it, but he must be prepared to justify such decision in public, and if he is not, his only alternative is to resign his office.

The cabinet is the prime minister's advisory council, and not a committee competent to bind its chairman with instructions.

The cabinet, whatever its internal divisions may be, must present a united front to parliament and the public. But to say that the minority so long as they remain in the cabinet are bound by the decision of the majority is not an accurate statement of the position. Very often a prime minister puts a question upon which the cabinet is divided to the vote. But he is not obliged to do so. The final decision rests with himself, and he is not called upon to do more than

listen to the opinions of his colleagues before giving it. If they refuse to accept his decision he can ask them to resign, and if the whole of his colleagues retired he could still remain in office, provided that he could find others to take their place. When however the prime minister retires or dies, all his colleagues at once vacate their offices, and a new prime minister is charged with the task of constructing a new cabinet. It is impossible in the light of these facts to regard the cabinet as a council of heads of departments with the prime minister in the chair. The real relation of the prime minister to his colleagues is that of an admiral to the captains in charge of the ships which compose his fleet. So long as they retain their commands, they are bound to abide by his decisions and to uphold his policy, even though a majority of them may differ from him when asked for their advice in a council of war. The same principle of loyalty forbids a minister to betray in public a difference of opinion between himself and his chief, so long as he remains in the cabinet. The prime minister is indeed the *de facto* monarch, so long as a majority of the people, as reflected by a majority in parliament, is prepared to support his rule. To a great extent the country will judge him as it judged the mediæval kings by the ministers he chooses, and by his ability to retain their willing obedience. The relative strength of their characters and positions will determine how far he defers to them or they to

him. He consults them as a matter of course before he acts, in order to see how far they are willing to go, in helping him to retain the support of parliament, or failing that, of the nation at large. For the moment he loses his majority in parliament he has either to resign or to appeal to the electors to give him a parliament which is prepared to support him in power. We must pause, however, to examine the working of parliament itself, in order to see what its real relations with the ministry are.

CHAPTER XXIV.

Parliament.

The settlement of supply between ministry and parliament must take place every year.

In Chapter XXI. we remarked that politics are mainly concerned with the discussion of proposed changes in the existing law and administration. Under constitutional government there is a tendency to require that such proposals shall be stated in writing and become the subject of discussion between the government and parliament in the form of bills, which when agreed upon, become statutes and are incorporated in the law. In the earlier days of parliamentary institutions, the government, which was then the King, was tempted to avoid these discussions, by neglecting to summon Parliament, which then fell back on the expedient of declining, when it met, to vote supplies for more than twelve months. In England this practice was finally established in 1689 after the Revolution which cost James II. his crown, and at the same time it was secured that a standing army could only be maintained in virtue of a mutiny act, which requires to be re-enacted by parliament every year.

The ministry, which has now taken the place of the King, is therefore compelled to revise its programme of administration, and re-

submit it for discussion with parliament at each annual session. Even if it happened that the ministry had no changes to propose in the common or statute law, it has always to ask parliament to renew its statutory power of spending money, and in doing so it will be called upon to justify its administration in detail and also as a whole. The power of the government to collect taxes under the existing revenue laws, except where they are granted like the income tax in the United Kingdom for one year only, continues to operate. They can go on gathering money into the treasury; but their power to spend it ceases at the end of the financial year and can only be renewed by the sanction of parliament. We may begin therefore by seeing how ministers and parliament deal with the raising and expenditure of public revenue.

Questions of taxation or supply are originated in committee, but all decisions are finally ratified in statutory form.

All questions relating to the levying of taxes or spending of money must be first introduced in the lower house. The treasurer begins by moving that the house do resolve itself into a committee of ways and means. It is to be understood that the house, like other public assemblies, can appoint from its members committees, and refer business for their consideration. Such committees are presided over by a chairman, not by the speaker, and their business is conducted in a less formal way than when the house is in full session. If, however, it is desired that some business should be dealt with by all the members of the house, but in a manner less formal than

is prescribed by the rules which are observed in full session, the house appoints a committee consisting of the whole of its members. It is then said to resolve itself into committee. A committee of the whole house does not sit apart. It uses the same chamber but to signify that the house is in committee, the speaker leaves the chair, and another and lower chair is taken by the chairman of committees. When the treasurer moves his motion the house is still in full session with the speaker in the chair. The treasurer then describes to the house the financial position of the country, and explains what revenue the government requires and how it proposes to raise it. His speech is followed by a general discussion on the whole financial position, in the course of which any question which has the remotest bearing on the economic position of the country may be raised. When the motion or motions relating to new taxation have been carried, the bills necessary to give effect to them are introduced at a later date, and are dealt with just like other bills, except that they cannot be amended in any way which is not consistent with the motion upon which they are founded.

Procedure adopted in granting supply shows that the ultimate control of administration belongs to the ministry, not to parliament.

The estimates of expenditure are discussed in detail and passed vote by vote in another committee of the whole house, called the committee of supply. As we have seen above the estimates are a detailed and comprehensive programme of the whole administration for the coming year. Members of the house can

move that an item should be reduced or struck out, and in this way an opportunity can always be found upon which to raise the discussion of any matter however small. It is in the power of the house on a motion of a private member to strike out or reduce an item, sub-head or vote, but the South African constitutions contain the provision made in the standing orders of the House of Commons that no increase of expenditure can be moved except by a minister. This prohibition may serve to remind us that the scheme of administration embodied in the estimates is the programme of the ministry and not of parliament. Parliament holds the purse strings and may refuse to release them or may draw them tight here and there. When the ministry has proposed to do this or that parliament may refuse the means, but it cannot order government to do what it has not proposed to undertake nor can it vote the money required for such purposes. It is for ministers in fact to plan the administration and though parliament may reject or curtail their proposals, it cannot extend them, still less can it initiate a budget of its own. When all the votes on the estimates have been discussed and passed, parliament then passes a short formal Act, a specimen of which will be found in Statement No. XXXV. In this way the raising and spending of revenue is reduced by parliament to the form of statute law.

Statement No. XXXV.

Procedure in dealing with bills introduced by ministers.

Let us now see what happens when some change in or addition to the ordinary law is proposed. The minister in charge of the measure moves that leave be given to introduce a bill for altering the law of prescription or of public education or for some other purpose, and when this is passed, proceeds to move that the bill be read a first time. After the adoption of this motion the title of the bill is read *pro forma* by the Clerk. The reading of the whole bill would involve a useless waste of time, as when printed it can be read by members for themselves. As a rule both these motions are passed without debate, as they represent the formal method of bringing the bills into members hands. On a subsequent date the minister in charge of the bill moves that it be read a second time, and on this motion is discussed the question whether the principle of the measure is acceptable to the house. If the house resolves that the bill should be read a second time it is then in most cases referred to a committee of the whole house, in which the details of the measure are considered and amended. Sometimes, however, a bill which has technical aspects is referred to a select committee to be reported upon, and the committee of the whole house discuss the details and amend the bill in the light of the report of the select committee. This is the practice observed in South Africa, but in the Imperial parliament a select committee or grand committee does the work which would otherwise be done

by committee of the whole house. The discussion in committee of the whole house is free and informal, and a member may speak as often as he likes. When the committee of the whole house has completed its work the bill is reprinted in such a way as to show the alterations made by the committee in the original draft. The bill is then considered by the house in full session with the speaker in the chair, when the amendments adopted in committee are proposed for adoption by the house itself. A fresh debate may take place on every amendment, but each member may only speak once. Further amendments may be introduced but only under certain restrictions, and sometimes when the house becomes dissatisfied with the form of a bill it is recommitted for further discussion in committee. When the report stage is completed, the minister moves that the bill be read a third time, and the house may then discuss whether the measure as amended is desirable as a whole and such that it ought to become the law of the land. If passed through the third reading, the bill is sent to the other house where the same process is repeated from beginning to end.

Bills introduced by private members can only be passed by tacit indulgence of ministry.

Hitherto we have spoken as though bills were introduced by ministers as a matter of course. In practice the majority of bills that pass are so introduced, as will be seen by reference to Statement No. XXXVI. As we have said, no one but ministers may introduce measures providing for the raising or ex-

Statement No. XXXVI.

penditure of public money; but with this exception, and it is a very large one, each private member may propose any number of bills. If, however, the bill should conflict with the government's policy, the government will oppose it; and as they control a majority in the house the bill will be lost. In most cases, however, the government as such will neither support nor oppose the bill, leaving the members of the house to deal with it as they think fit, irrespective of party. But even so, it is the government which arranges the business of the house and through its majority controls its time; and in the Imperial parliament, where time is very precious, this power is fatal to the passage of all but a few bills introduced by private members. The time of a South African legislature is less precious, but even here it may be said that private members have to content themselves with such leavings as the government can spare. In this country legislation at the instance of private members is repressed by a sense that, in all but minor matters, it is for the government itself to initiate laws. A private member may introduce bills for the protection of wild flowers, or for the amendment of the game laws; but if he proposed to alter the basis of the laws relating to gold-mining companies, or the parliamentary franchise, he would be thought to have trespassed beyond his sphere.

Private bills distinguished from public bills.

So far we have dealt with public bills only; for the circumstance that a bill is introduced

by a private member does not affect its character as public legislation. Private legislation has a different origin and is dealt with in a different way. The distinction between matters which are proper for private as opposed to public bills may be understood by reference to the origin of private legislation. In the middle ages it was the custom for any person, corporation or municipality in need of government help, to address a petition to the Crown. Matters such as the grant of a charter to a college, or even of a patent to an inventor, which until 1624 was within the royal prerogative, would be referred by the King to his ministers or counsellors and would be dealt with by the Crown in council. If on the other hand the prayer of the petition could not be satisfied without some change or addition to the common law or statute law, it had to be dealt with by the Crown in parliament and a special law had to be passed for the purpose. Till fifty years ago the English courts had no power to grant divorce, and it could only be obtained in this way. Similarly a canal or railway cannot be constructed by a private corporation without special powers to override the ordinary laws governing the rights of property. Municipal bodies are constantly finding in the performance of the duties assigned to them, that new powers are necessary to meet changing conditions or to give effect to fresh discoveries of science. In all these cases the powers may be obtained by private legislation.

Procedure followed in dealing with private bills.

Traces of the ancient origin of this procedure still remain in the modern practice of parliament, which requires that a private bill must be initiated by a petition from the promoter to parliament praying that certain special powers may be conferred upon him. As these powers will more often than not affect some private interests, the form in which the petitions are to be made is specified in numerous standing orders designed to secure that the real intentions of the petitioner shall be made known to everyone whose interests are affected. Accurate plans must be lodged with the petition of any work which it is proposed to carry out for a considerable period before the bill is introduced, and these plans are open to public inspection. Private bills are dealt with by the house in much the same way as public bills, with this important difference. After being read a second time they are referred to a select committee, usually consisting of five members selected with great care under special rules, in order to secure impartiality. The committee practically acts as a court, and conducts its proceedings as such. The evidence of witnesses for and against the bill is heard, and the case for the promoters and opponents is usually conducted by counsel, and the passage of the bill as a whole and the form in which it passes depends as a rule upon the committee. Sometimes a private bill is thrown out on second reading, but the details of such blils are so complicated and technical that the house is

generally content to leave them in the hands of the committee which listens to all the evidence and hears the arguments of counsel for and against the bill. In other words the house generally deals with the bill in strict accordance with the terms of the committee's report. But a private bill, unlike a public bill, may be thrown out by the select committee, and in this event it does not come back to the house. If, however, a public bill fails to pass before the house is prorogued it comes to an end. A private bill, on the other hand, may be taken up at the point at which it was dropped in the previous session in order to save the promoters the trouble and expense involved by a repetition of the whole procedure. It is important to note that private legislation is seldom affected by the conflicts of party politics.

South African Union and Private Bill Legislation by Ernest F. Kilpin, C.M.G., 1908.

In a recent paper Mr. E. F. Kilpin, Clerk of the House of Assembly in Capetown has shewn how a South African parliament might follow the procedure applied by the Imperial parliament to Scottish private bills. He proposes that the national parliament should allow the enquiry to be held locally by local authorities instead of by a select committee of parliament. It is a subject upon which Mr. Kilpin can speak with authority, and the reader will do well to consult his remarks on the subject.

Upper houses. Limitations of their power in dealing with money bills.

Money bills must originate in the lower house, and it is only at the Cape that the upper house, by reason of its elective consti-

tution has the right to amend such bills. At the present juncture it is important to note that the looseness of the word "money bill" has led to difficulties in the Transvaal parliament. In Natal, the Orange River Colony and the Transvaal the power of the legislative council is limited to the acceptance or refusal of money bills as a whole. The rejection of the annual appropriation bill would create a deadlock, and nothing but the most weighty reasons would justify a nominated council in taking such a step; nor have any of the nominated councils ever attempted to do so. Bills imposing special taxation on natives have, however, been rejected by the legislative council in Natal.

How bills are settled between the two houses.

A bill which is not a money bill may originate in either house. When a bill has passed the third reading in the house in which it originated it then goes to the other house and passes once more through the various stages of discussion. If amendments are made by the second house the other house is invited to agree with them, and if it does so the bill then passes for the governor's assent. If, however, the amendments are not accepted, the bill is returned for further consideration together with the expression of a hope that the amendments in question will not be pressed. Amendments may also be returned in an altered form. A bill may pass backwards and forwards any number of times, and if the two houses cannot at length agree, each may appoint a committee to discuss a

compromise. In the Transvaal and Orange River Colony the governor may determine the matter by summoning a joint sitting of the two houses. If however the lower house has been dissolved in consequence of a disagreement with the upper house, and after the dissolution still insists upon the particular measure, the governor has then no choice in the matter and must summon such a joint sitting.

Action of a second chamber in checking precipitate legislation.

A bill cannot become law until it has been passed by both houses in identical terms. It is on the face of it most unlikely that any two deliberative bodies would agree on every detail of a complicated and contentious measure. If both houses were to press their legal rights to amend bills a two chamber legislature would never pass any but the simplest and least contentious of measures. It is a curious fact, however, that the legislatures of most democratic countries are now bicameral, and this is true with regard to the United States of America, not only of the federal government but also of the forty-five States of which the union is composed. Experience seems to have led modern democracies to fear a too great facility for translating the impulse of the moment into law. It often happens that the discussion of some proposal in a popular assembly shows it to be fraught with serious danger to the public interest. The government however and the majority which supports them have committed themselves to the proposal and are perhaps blind to argument,

although the country at large may have ceased to support them. The debates are repeated in the second chamber where, perhaps, the majority is not committed, and as a consequence the measure is either thrown out or amended. In the meantime the majority in the other house have had time to realise the force of argument and the effect of their action on public opinion, so that they are not unwilling to acquiesce in the moderating attitude of the upper house. The function of a second chamber was well illustrated by Washington at the time when the American constitution was under discussion. He was challenged at the tea table by a young and eager exponent of democracy to justify the institution of a second chamber. Washington pointing to the saucer into which the youth had emptied his tea-cup, replied: "That is the use of a second chamber. It is something into which we pour our legislation to cool."

Functions of an upper house contrasted with those of a lower.

Legislation by way of two chambers is only possible in so far as this principle is recognised. Under democratic institutions no people can be governed better than they deserve, and public opinion must prevail in the long run. But public opinion is nothing more than the opinion of a number of persons who, like all human beings, are prone when carried away by passion to do what they will afterwards regret having done when their action is irrevocable. It is the essence of popular government that public opinion should

have free expression, and it is the special function of the lower house to reflect the opinion of the people for the time being. It is on them that the government of the day depends for its mandate, and for that reason their mode of election is always in some respect more democratic than that of the upper house. It is for a lower house as a general rule to initiate important legislation, and for an upper house to express, not the impulse of the nation, but its afterthoughts. And an upper house which knows its business will not resist the proposals which come to it from the lower house, unless it is convinced that when the passions of the moment have cooled, public opinion will no longer approve them. Its members will therefore be content to accept many proposals, against which they would as individuals be prepared to vote, if they were members of the lower instead of the upper house. They will suggest amendments for the consideration of the lower house which would in their opinion improve the measure submitted to them, but they will only insist upon such amendments where they have reason to believe that the lower house is proposing what public opinion may or may not approve now, but which in any case it will regret hereafter.

The upper house acts as a check on the ministry rather than on the lower house.

The effect of an upper house is not to be measured either by the number of bills that it throws out, nor yet by the number of amendments that it succeeds in making. Ministers will not if they can help it, pro-

voke a conflict between the two houses, and are very chary of asking the lower house to adopt proposals which they do not think can be carried through the upper. As already explained, nearly all the legislation is initiated by the government and not by members of either house apart from the government. The mere existence, therefore, of a second chamber has a silent but powerful effect in tempering the proposals of the ministry. The fact is that a second chamber is required not as a check on the action of the lower house, but upon the action of the government for the time being. It is for this reason that in practice a conference between representatives of the two houses is comparatively rare in South Africa, where the same ministers can sit and speak in the legislative councils as well as in the assemblies. The government always has its majority in the lower house, and there is generally a majority in the upper house which is mindful of its true position in the constitution.

Minor functions of upper house as a corrective body.

The second chamber has another function, quite uncontentious in character, the prevention of errors made through haste. It often makes a number of amendments which are accepted without demur, because they are corrections of oversights in drafting, and are recognised as improvements in the form of the bill. Technical defects in legislation are apt to escape the attention of a popular house absorbed in a party struggle over the main issue of a measure. An upper house

may do useful work by concentrating its attention on blemishes, many of which result from the process of amendment in the lower house.

Upper houses ought to initiate non-party legislation and more especially measures consolidating statute law.

There is also another function which ought to receive much more attention from upper houses than it generally does, that is the introduction of measures which are none the less necessary because they are non-party and unsensational in character. More especially it should devote itself to consolidating in comprehensive statutes matters which have been dealt with by parliament at different times in a number of different laws. A splendid opportunity for public usefulness in this direction has been missed by the House of Lords. Under any scheme of union it will be necessary for the National Parliament to consolidate a mass of colonial acts and for many years they will be heavily burdened with work. The more technical part of this work such as the consolidation of laws relating to bills of exchange, insolvency and such like would doubtless be drafted by a commission, but a great deal of time might be saved in the lower house if these drafts were dealt with by the upper house first of all. If government had the right to appoint some members to the upper house, they would then be able to arrange that a few distinguished lawyers should be members of the legislature as well as of the commission, and so establish a link between the two. A little foresight in

this respect when framing the constitution may do much to accelerate the attainment of unity in the statute law of South Africa.

Problem of obtaining a satisfactory second chamber. Inherent defects of nominated chambers.

A constitution is exposed to two opposite dangers. If the mechanism begins to run too fast serious damage may result; but the damage may be even worse if the motion is stopped with a sudden jerk. It is almost as difficult, indeed, to devise an upper house which will retard hasty legislation without straining the constitution to breaking point as to contrive a safety catch for the skips of the deep-level mines. In Statement No. XXXVII. will be found a description of the upper houses in the Colonies of the British Empire—sixteen in number, including the states of the Australian Commonwealth and two of the provinces of the Canadian Dominion. Of these no less than ten are nominated. In several cases the Imperial government has tried to mitigate the risk felt to be involved in the grant of responsible government by nominating the first upper house and leaving future appointments to the colonial government of the day. But a nominated upper house is liable to err on the side of weakness rather than strength. Those in South Africa have scarcely had time to show what character they will ultimately assume; but in Canada it is said that governments are tempted to treat them as shelves upon which the dissatisfied failures in their own party can be put away. But in any case men who speak for no one but themselves will incline to

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be weak at critical moments; and it is at such moments that the arresting action of a second chamber is really needed.

Means of obtaining an elective upper house which differs in complexion from and will act as a check on the lower house.

If however an upper house is so elected as to reproduce the character, composition and attitude of the lower house it cannot be trusted to correct its action. In the Cape Colony the franchise for the upper house is the same as for the lower, but grouped in larger constituencies. As plumping is allowed minorities who fail to obtain representation in the lower house may secure it in the upper. In effect however it seems to be too close a reproduction of the assembly to justify the cost and labour involved in the bicameral system. The provision that a candidate must possess property worth at least £2,000 in order to be qualified for membership of the Cape legislative council is of course based on the idea that men with a stake in the country will be more cautious than those who have none. It is with the same object in view no doubt that a higher property qualification is required of electors for the upper house in the case of four of the Australian States. But distinctions based on property may easily have the effect of bringing the upper house to be regarded as the citadel of the rich against the poor, and of inducing an immoderate temper in the popular house whose peculiar function is the granting of supply. Finance, moreover, is but one of the matters in which a moderating influence is required. It would be more to

the purpose perhaps if the upper house were made to represent education rather than wealth. In South Africa it might also afford a convenient means for according to coloured races a place in the political institutions of the country. If by some scheme of proportional representation a certain number of members were secured them, they would feel that their voices would be heard and have some chance of tempering the policy of the government and assembly in legislation affecting themselves. If, as is generally thought proportional representation tends to destroy the party system, it might be used to great advantage in the election of second chambers.

A second chamber only needed in a Sovereign legislature.

The arguments in favour of a second chamber are not convincing, except as applied to the legislature of a sovereign government which can commit the country for all time. A bicameral system largely increases the labour and expense of legislation, and is superfluous as applied to local authorities whose actions are controlled, and may in the last instance be reversed, by the national government from which their powers are derived. In America and Australia sovereignty rests primarily with the governments of the separate states, and their legislatures are all bicameral. In Canada where sovereignty, except in certain specified matters, rests with the central government, the tendency to regard second chambers in the provincial legis-

latures as superfluous is apparent, for since the Union all of the provinces but Nova Scotia and Quebec have abolished their upper houses.

Information also elicited by questions in parliament.

The whole of the business in both houses, except in the select committees, is transacted in public. Popular government means that the people are to settle their own affairs, but to settle them they must know them, and the primary function of parliament is to secure the public examination of the government on all the affairs of state. There are other facilities for doing this in addition to those afforded by the discussion of statutory measures. Information is elicited by the process of interrogating ministers, at the beginning of each sitting. Questions can be asked by any member of parliament on one or more days notice, in order that the minister may have time to collect the information required. Sometimes the answers given are made the subject of a motion placed on the paper for discussion at a later date.

Discussion of Government policy on motions.

Any matter not specially raised, either by the estimates or by a bill before the house, can be brought up for discussion by a special motion on the subject. When it is thought that the government has lost the confidence of parliament or of the country, the matter is often tested by a vote of confidence taken on a motion so framed as to bring the whole policy of the government under review.

CHAPTER XXV.

Relative Positions of Sovereign, Ministry, and Parliament.

Respective functions of the three parties in the constitution.

We are now in a position to determine what parts the Sovereign, the ministry and parliament each play in the constitution.

Function of ministry to make plans of government and settle their final form in consultation with parliament.

Popular phraseology, which always speaks of the ministry as "the government," is based on a perfectly correct apprehension of its function in the State. It is the duty of the ministry to decide from year to year what particular work and how much of it the machinery of government can undertake, and the schemes it prepares are submitted to the criticism of parliament in the form of estimates. It is also responsible for the manner in which these functions are carried out and is expected therefore to justify its policy in great detail when introducing the estimates, in answering questions and dealing with motions, and in explaining and supporting bills imposing taxation, defining methods of administration or altering the existing administrative law. It must also propose legislation which public opinion demands, in order to keep the ordinary law in harmony with the changing needs of the country.

The function of parliament to reduce measures submitted by ministry to a form agreeable to public opinion by persuading ministry to accept amendments.

Just as governing is the proper business of the ministry, so parleying is the proper business of the two houses, and here again the word "parliament" is a true index of their real character. The function of parliament is to secure that the ordinary administration is properly carried on, and still more, that effect is given to the particular objects which the people have in mind for the time being, and to such an extent and in such manner as public opinion approves. With a view to securing these objects, members of parliament discuss the whole business of government with ministers, and the result will be that ministers will effect many alterations in the measures they have proposed. They can only retain office so long as they have a majority in parliament to support them, and a session is one continuous effort on the part of the ministry to reconcile parliament to the scheme of government for which they stand, and to that end they will be prepared to modify it in all sorts of ways. But whenever in response to parliamentary pressure the ministry consents to modify the proposals it has made it is said to accept an amendment, abandon a measure, or to agree to the introduction of a bill. When the ministry has refused to accept some change in its proposals it cannot, unless the point is of a trivial nature, acquiesce in a contrary vote of parliament.

When ministry and parliament cannot agree, the one must resign or the other must be dissolved.

How far ministry give way to parliament depends on state of parties.

The complaisance of a ministry in meeting the views of parliament depends first on the strength, and secondly on the composition

and discipline of the majority behind it. A ministry with a bare majority will concede much to avoid divisions, and so will a ministry which does not know how far it can depend on certain sections of its followers. Sir Henry Campbell-Bannerman, with the strongest numerical majority of modern times abandoned the Trades Disputes Bill after it had actually been introduced by his government and accepted a bill drafted by the labour party. The course adopted on this occasion is accounted for by the fact that the majority largely consisted of men so fresh to parliamentary life that the whips were unable to predict their action. Now, however, that the ordinary conditions of party discipline are established, concessions on this scale are not so likely to be made. But, whatever the party conditions, there is always a point beyond which the complaisance of the ministry will not go. There was a point at which Dr. Jameson intimated to parliament that he would not give way and that if the majority failed to support him he would retire from office. In the Imperial parliament there is a certain section in the Liberal party who know that they could only press their views on naval expenditure or Indian policy to the vote, at the risk of seeing a change of government. The ministry would feel that, if they yielded beyond a certain point, they would be unable to vouch for the security of the realm or the maintenance of order in India, and would divest themselves of respon-

sibility by retirement from office. The ministry alone are responsible for the proper conduct of government as a whole, and they are responsible for any disaster which may befal the nation.

But after a certain point ministry will dissolve [parliament or leave office rather than yield.

When, therefore, it is apparent that a majority may reject a bill, which is vital to the scheme of government for which the ministry stand, or may insist on an amendment which is fatal to its purpose, the point at issue is treated as a question of confidence. This changes the complexion of the debate at once. The ministry have asserted their determination either to settle the law as they propose or to lay down their office. However small the point may be no one questions ministers' right to insist that, so long as they remain in office, it is for them to determine how the country shall be governed, or even what laws shall be passed. The question at issue is now whether they should continue in power, or whether their place should not be taken by others. This, however, is a matter for the people themselves, and parliament cannot pretend to decide it unless it can establish an indefeasible claim to represent their views. Parliament owes its existence to the fact that the people cannot assemble in one place and listen day after day to the detailed explanations of ministers. Each local community has therefore to appoint a representative to voice its interests and to discuss them in public with the ministry. By means of the press the people attend to what is going on,

and their opinions are largely shaped by the discussions which take place. It often happens that the representatives in parliament may have clung to opinions which a majority of the people who have elected them have changed, and it is for this reason that a parliament is denied the power of changing ministries at will. It knows that if it refuses ministers the right to say how the government is to be carried on, or what changes in the existing laws are to be made, they may question its authority to speak for the people and appeal over the head of parliament to the people themselves. In such an event the prime minister advises the sovereign to dissolve parliament, and unless parliament has been recently elected and no new issue has since arisen, the sovereign will do so and a general election will be held. If the country returns a majority to support the existing ministers, they will remain in office; but if not, they will resign; for it would be the duty of the Sovereign to dismiss them if they declined to do so.

Function of Sovereign to find the de facto ruler or give people opportunity to signify their choice.

If the majority who have refused to support the previous ministry form a regular party, the Sovereign will send for its recognised leader and entrust to him the task of forming a new ministry. Where, however, the parties are not clearly defined, the Sovereign may be called upon to use his discretion in selecting the leader most capable of commanding the support of a working majority, or failing that, of the electorate. Such a

leader often takes office on the understanding that parliament is to be dissolved at the first convenient moment, in order that he may have an opportunity of testing the question whether the electorate will support his government. As soon as the prime minister has been appointed by the Sovereign and has undertaken to form a ministry, the further responsibility of selecting his colleagues rests entirely with him. If he fails, the Sovereign has then to entrust someone else with the task of forming a ministry.

Ministry really make the laws.

With these considerations before us, we shall begin to question whether parliament and the ministry can properly be distinguished as the legislature and executive in the constitution. The legislation which does not originate with the ministry, that is, bills introduced by private members and private legislation, is of minor importance and small in volume. Even so, bills of this kind are allowed to proceed only in so far as they do not conflict with government policy or trench on the time required for government measures. All the more important legislation originates with the ministry, which asserts, so long as it remains in office, the right to refuse any amendment that parliament may propose. It listens with the utmost deference to all that parliament has to say, and, while going as far as possible to meet its views, claims the right to the last if not the first word in all that parliament transacts.

Why parliamentary system secures an experienced man at head of affairs.

As we have pointed out, the ultimate direction of the ministry rests with the prime minister. The final responsibility for making as well as executing the laws centres, therefore, in him as it centred in the monarch of mediæval times. But the process by which a prime minister is raised to office has an advantage, not only over the principle of heredity, but also over that of direct popular election; for it is better calculated than either of these methods of selection to raise a strong and experienced statesman to power. It would be difficult for a man with no political experience or capacity to become prime minister as General Grant twice became president, solely on the strength of his military prestige. The danger to which the United States is exposed of committing the destinies of that vast country to inexperienced hands for four years, is an instance of democracy trying to exercise more power than it properly can. A multitude of voters can rarely in the heat of an election get close enough to a candidate to judge of his real qualities as a statesman, and the party managers are apt to look first of all to showy qualities in the candidates they put forward. A prime minister on the other hand must prove to parliament his capacity for leading them before he has a chance of leading the people, and parliament in the course of years has every opportunity for knowing which of its members are the men with an aptitude for affairs. The selection of the candidates is in

fact undertaken, not by wire-pullers in view of a pending election, but by representatives of the people, accredited for the purpose with long and intimate experience of the men they select. If, moreover, he should prove a failure he can be got rid of, not like an American president at the end of a fixed term, during which he may do incalculable mischief, but at once.

The Sovereign the ultimate guardian of popular sovereignty.

The Sovereign, in ceasing to govern, has become the continuous symbol of the people's sovereignty, and for this reason all the majesty of state is associated with his office. In ceasing, like the Prophet Samuel, to rule the people he has acquired the function of discerning who is the leader by whom they wish to be ruled. Under normal conditions a division in parliament or a general election is enough to indicate the man whom parliament and the people are prepared to follow for the time being, and the Sovereign is then no more than the exalted functionary whose duty it is to place the sceptre of popular sovereignty in the hand of the *de facto* king. But a crisis in the national affairs may arise when parliament is not sitting, and the ministry may choose to pursue a course of their own and refuse to summon parliament. Or the ministry and parliament may unite in the adoption of a course distasteful to the people. In such cases the function of the Sovereign may cease to be merely formal and the titular head of the state might be called upon to face the grave responsibility of re-

ferring the issue to the people at large. In order to do so he would be obliged to dismiss the prime minister and entrust the government to one of his opponents, on the understanding that parliament would either have to be summoned or dissolved, in order that the electorate might express their wishes. In this case the new premier in accepting office must accept responsibility for the action of the Sovereign in dismissing his predecessor. Cases of this kind are rare in the Colonies as well as in the United Kingdom, but if it were not for the arresting action of second chambers the Sovereign would be called upon to take responsibility of this kind more often than he is.

Position summarised.

It will thus be seen that the Sovereign remains, always as the symbol, and sometimes as the instrument of the people's right to transfer the faculty of governing from the hands of one ruler to those of another. The *de facto* ruler is the man whose lead a majority of the people are prepared to follow for the time being, but permanence in office and the majesty of state continue to be associated with the wearer of the crown, and parliament has returned once more to the position it occupied when first summoned by the mediæval kings. It assembles to discuss with the ruler his entire conduct of the nation's affairs.

Advantage of keeping separate the functions of reigning and ruling.

One great advantage of this division of kingly attributes is that private citizens can openly criticise the conduct of national

affairs and agitate for reform, without exposing themselves to a charge of treason. When the King actually ruled, government itself was identified with his person. As Louis XIV. said "*l'état, c'est moi*," and to criticise the King or provoke discontent with his rule was to strike like an anarchist at the framework of society itself. As in Russia or even in Germany to-day it is difficult for the advocate of reform not to appear as the apostle of rebellion. But as soon as the power of governing is separated from the power to change the government, and assigned to different persons, it is easy to distinguish legitimate agitation from revolt. There is a certain logic, therefore, in the anarchist who strikes at Sovereigns rather than their ministers, for his engines of destruction are aimed not at the government of the day but at the principle of government itself.

Difficulty of securing impartial presiding functionary in a republic.

The functionary who is responsible for discerning which political party commands the support of public opinion must stand aloof from all parties. This freedom from party influence has been secured by the hereditary principle, in the United Kingdom and in the Colonies, by the appointment of a governor by an authority independent of the colonial government from a country remote from its scene of action. How to secure an impartial functionary of this kind is a problem which republics must always find it difficult to solve by any process of election; for it is impossible in practice to elect anyone who is free from

party connections in the past. The title of an elected president to his office resembles too closely that of the prime minister, and he will be far more likely than a constitutional monarch or a governor appointed from over-sea to confuse his functions with the man whose business it is not to reign but to rule. And unless he is elected for life, anxiety to secure a further extension of office may disturb the equal balance of his judgment.

Concentration of responsibility the keynote of the cabinet system.

By the expedient of retaining the monarchic principle while dividing the ancient attributes of monarchy certain advantages of great practical importance have been attained. Except where very little in the shape of government is wanted, it is virtually impossible for a large number of people to assume the control of public affairs. Attempts to do so on the part of the Commonwealth parliament and of the French assembly led straight to military dictatorship. More often the power sought to be exercised by too large a body is insensibly usurped by a small group of astute politicians who manage the business from behind the scenes; and where electors try to keep administrative power in their own hands this is certain to happen. In the United States, where the electors have tried to keep even the appointment of officials in their own hands, an endless succession of elections is the necessary result. So numerous and frequent have elections become that their management and the selection of candidates has fallen into the hands of a few

professional wire-pullers, who are not before the public eye or subject to its control. Democracy is always in danger of defeating its own ends by endeavouring to exercise a more detailed control than is possible from the nature of the case. The tendency under British institutions is to acknowledge that the power to govern must rest in the hands of a few and to secure that it shall be clearly recognised where it rests. There is then no difficulty in seeing who is the proper person to be criticised. The prime minister is visibly responsible for the business of the government and when anything goes wrong everyone knows at whom they must strike and where to direct their efforts for reform.

Importance of distinguishing functions of government from those of parliament.

If the ministry were a committee of parliament as it is under the Swiss constitution, the real governing power would rest with parliament and not with the ministry. The duty of ministers would then consist in advising parliament, ascertaining the wishes of the majority and giving effect to them. They would not be called upon to resign if parliament rejected their advice, for responsibility would rest on its own shoulders and not upon theirs. A committee of parliament must necessarily recognise the body which appoints it as the source of all authority. But at critical moments when, for instance, it might be necessary to decide between peace or war, it would be impossible for members of parliament to have grasped the situation in all its bearings as it must be grasped by the few

men who transact the affairs of the nation from day to day. While parliament might be qualified to assess the justice of their cause, it would be difficult for them to estimate rightly the strength of the national forces or those of the state to which they were opposed. Under the influence of such feelings as excited the British nation when the Russian fleet fired on fishing smacks in the North Sea a ministry is far less likely than a parliament to commit the country to war. Parliament consists of so many members that the blame cannot be located if the country is plunged in disaster, and none of them can feel a sense of responsibility approaching that which weighs on a Prime Minister under the British parliamentary system. It is of the utmost importance not only to understand the real difference between the functions of the ministry and those of parliament, but to apply them consistently throughout. For in practice they are not always understood nor always applied, and the inclination of parliaments is naturally towards the enlargement of their own functions. For special reasons it may be necessary to provide that judges or the auditor-general should only be dismissed on petition of both houses. But if parliament were to appoint committees to "assist" ministers in the management of railways, prisons or native territories, they would begin to encroach on the sphere of government to a mischievous degree. Such arrangements would interfere with the principle of

concentrating an undivided responsibility in the hands of one authority which is the essential feature of the cabinet system.

Danger of separating legislative from executive function in practice.

It is in harmony with this principle that the ministry should exercise a final control over the making as well as over the administration of laws. When philosophers began to perceive the theoretic distinction between the legislative and executive functions, they assumed too lightly that the same distinction could be carried into practice. Montesquieu, who had paid a visit to England in 1740, wrote in 1748 that the separation of the judicial, executive, and legislative functions was the principal safeguard of British liberty. The statement was a half truth based on hasty observation, but nevertheless it made a deep impression on those who framed the American constitution. Inspired with this idea, they created a legislature and an executive neither of which can control the other. Congress cannot remove a president who is opposed to the laws it has passed. Neither can the president secure the enactment of laws which administrative experience shews that the country requires. The worst features of the American system are perhaps due to this attempt to force theoretic distinctions into the actual practice of government. Constitutions of the British type have divided the governing power, but not on the lines which Montesquieu thought he observed. The faculty and responsibility of government, of making as well

as of executing laws is placed in the hands of one man, the prime minister. But the power to make and unmake governments is reserved in the first place to parliament, in the second to the Sovereign, and in the last resort to the nation itself. As in the American Republic this power is called into play at stated periods when parliament is dissolved by efflux of time and a fresh election has to take place. But it can also be called into play at any moment and is never likely to rest in abeyance when once a demand for its exercise has arisen.

The art of destroying and creating governments without resort to violence or risk of anarchy is the great political discovery of the Anglo-Saxon race, and it has been accomplished not by revolution, but by the gradual conversion of ancient institutions to the purpose of popular government. The monarchy itself has been preserved, though monarchs like Charles I. or James II. were executed or dethroned, and time with subtle irony has transformed their successors, whether kings or governors, into symbols of the peoples' sovereignty and instruments for the execution of their will, whenever they have resolved to remove one ruler and establish another.

PART V.

CONSTITUTIONAL METHOD OF ESTABLISHING SOUTH AFRICAN UNION.

CHAPTER XXVI.

The Legal Foundation of South African Government.

Respective positions of Crown and Parliament in the constitution of United Kingdom.

Whatever part of the British Empire a man may visit, he will find a government which undertakes to interpret, enforce and alter the law. Except in the United Kingdom itself government is constituted by some document issued either by the authority of the Crown in Council or by the authority of the Crown in Parliament, that is to say the parliament of the United Kingdom. This document takes the form in the first case of a charter, of letters patent or of an order in council, in the second of an Imperial statute. The Crown in Council is in general the executive authority, and in the case of certain colonial possessions retains also the power of making laws. Parliament, however, that is the Crown, Lords and Commons acting together, is the paramount legislative authority. The powers of both are based on custom or common law. But while parliament can limit the power of the Crown, the Crown by its prerogative cannot limit the power of parliament. Sovereignty, that is the ultimate power of changing all law whether statute or common law throughout the Empire, rests in the parliament of Great Britain.

These considerations must be kept in mind when we are seeking to discover where legal authority in the colonies of the British Empire has its root.

After secession of American colonies responsible government granted by Act of parliament instead of by royal charter.

When new territories beyond the sea were acquired by the United Kingdom, the Crown undertook by virtue of its prerogative, to establish a law, to create a government, and to assign to it certain powers of interpreting, enforcing or changing the law. Some of these territories were occupied by Europeans who claimed in time the same right of managing their own affairs as was enjoyed by British subjects in their native land. These liberties were sanctioned in the case of the American colonies by charters granted by the Crown, but were eventually over-ridden by statutes of the British parliament, which imposed taxes without reference to the local legislatures. The secession of the American colonies was the result and animated by jealousy of colonial independence, the British Parliament began to take into its own hands the power of prescribing the constitutions of the larger colonies. The government of Canada was regulated by successive statutes in 1774 and 1791, so that when forty years later Lord Durham recommended the establishment of responsible government, the change was naturally effected by act of the Imperial parliament.

until in the case of Cape Colony the Crown once more assumed right to grant self-governing constitutions.

Thereafter, whenever it was necessary to establish responsible government in any of the British colonies, the same procedure was fol-

lowed until 1872, when a departure was made from it in the case of the Cape Colony. This departure was really consequent on a previous grant in 1850 of an elective legislature by letters patent issued to Governor Sir Harry Smith, declaring that there should be a parliament consisting of the governor, a legislative council and a house of assembly. Both chambers were to be elected and constituted in manner to be prescribed in an ordinance, which the governor was authorised to frame and enact with the advice of the then existing legislative council, subject to confirmation by the Queen-in-council. Power was reserved by the Crown to alter or amend the necessary ordinance or ordinances. It should be noted that this power to amend by order in council applied only to these ordinances and not to ordinances which might be passed subsequently by the new elective legislature to be constituted.

The ordinance was passed by the Cape legislature on the 3rd April, 1852. By an Order in Council dated 5th March, 1853, this ordinance was amended and confirmed as amended, and is still the fundamental document of the Cape constitution.

Cape legislature was accorded power to alter the constitution.

The colony then obtained an elective legislature, but the executive government remained entirely in the hands of the Governor, who appointed his own ministers, and there was nothing in the law or practice of the constitution which made these ministers dependent on the legislature for their tenure of office. The

order in council, however, by which the constitution ordinance of 1852 was amended and ratified, expressly grants to the colonial legislature the right to amend the constitution ordinance through which its own powers were derived, subject to the ordinary conditions of royal assent and power of disallowance. On June 4, 1856, a law was passed to amend the provisions of the constitution ordinance relating to the registration of voters and the taking of polls, and since that date laws have been passed from time to time altering the number of members of the two houses, their qualifications, their mode of election, the franchise, and the proceedings of the houses, and amending the constitution in many other respects. The Cape legislature thus has power to develop its own constitution by ordinary acts of legislation, and subject to the assent of the Imperial government signified through the Governor which is required in all colonial legislation, there is apparently no limit to the power of the Cape legislature to alter the constitution.

Change from representative to responsible government effected by Act of Cape legislature

When the time came for establishing responsible government, or in other words for placing the executive as well as the legislature under popular control, the change was effected as follows. On November 28th, 1872, a short act of ten sections was passed providing that the holders of ministerial offices might be elected for and sit in either house, notwithstanding the provisions of the constitution ordinance which disqualified any person hold-

ing an office of profit under the Crown from membership of either house of parliament. The Act further provided that the holders of ministerial offices might sit and speak, but not vote, in the upper house if they were elected to the lower, and in the lower if they were elected to the upper. The act also contained provisions for pensioning existing members of the executive council "in the event of their retirement from office on political grounds." Anyone not acquainted with the political customs of the British Empire might read through the statute book of the Cape Colony without guessing when he came to this law, filling no more than two of its pages, the vital nature of the change effected under cover of it. The preamble indeed declares that the act is expedient "in order to the introduction of the system of executive administration commonly called responsible government." But the act itself does no more than remove certain technical difficulties.

and also by change in instructions to Governor.

The real change from representative to responsible government was effected by a change in the position of the governor of the Cape Colony, made by Letters Patent "constituting and appointing" Sir Henry Barkly to be governor and commander-in-chief during the Royal Pleasure, and by Royal Instructions. Instead of being directly responsible as the agent of the Crown for the whole administration of the colony, the governor was now to be in the position of a strictly constitutional ruler acting only (except in certain specified matters

such as the exercise of the prerogative of pardon in capital cases) on the advice of his Ministers, and appointing as ministers only men who were able to command a majority in parliament. The officers who had hitherto constituted the executive retired, and the Governor then sent for Mr. Molteno, who was recognised by a majority of the members of the legislature as the man whose lead they were prepared to follow. Mr. Molteno submitted to the Governor a list of members of parliament whom he wished to have appointed to the ministerial offices as his colleagues, and these were as a matter of course appointed by the governor. By virtue of the provisions of Law No. 1 of 1872 they were able to accept these paid appointments under the Crown without vacating their seats. Henceforward they were understood to hold office only so long as they could command the support of parliament or of its successor if they advised the governor to dissolve it and appealed to the electors. Afterwards the Letters Patent issued to Sir Harry Barkly were revoked and replaced by fresh Letters Patent dated the 26th February, 1877, making permanent provision for the office of governor. The object of this change was to obviate the necessity for issuing new letters patent whenever a new governor was appointed. Amended Royal Instructions were issued simultaneously. These letters patent and instructions, subject to certain amendments made in 1904 and 1906, are the documents which set forth the powers vested in the governor to-day.

Constitution of Cape Colony is flexible.

It will thus be seen that the constitution of the Cape Colony is contained in a number of different instruments, some of them being letters patent and orders in council, that is acts of the Crown in council, and others being laws passed from time to time by the colonial legislature itself, in virtue of the powers accorded to it by the letters patent and orders in council. It is a constitution of a most flexible kind, because unlike the constitutions of the United States, of the Dominion of Canada, or of the Commonwealth of Australia, it can be altered from time to time by the simple act of the colonial legislature.

Responsible government in Natal established on similar lines,

Responsible government in Natal has been attained by a similar process. Natal was originally organised as a province of Cape Colony; but on July 15th, 1856, a royal charter was issued erecting it into a separate colony under a lieutenant-governor, assisted by executive and legislative councils. The legislative council was to consist partly of elective and partly of official members, the former being in a majority of twelve to four, and power was given to the legislature to repeal, alter or amend all or any of the provisions of the charter, subject to certain reservations as to the assent of the Crown. Under this constitution frequent amendments of the charter were made by the colonial legislature affecting the number of members, the franchise and other matters, till in 1893 a law was passed providing for the establishment of responsible government in the colony. By this act the legislative council

abolished itself and established in its own place a legislative council nominated by the Governor in council and a legislative assembly consisting of thirty-seven members elected on the basis of the then existing franchise. The Act also contained provisions similar to those in the Cape Act (No. 1 of 1872) which established responsible government, for the appointment of ministers who could be elected members of the legislature, as well as hold office under the Crown. As the upper house was to be appointed by the Governor, it was provided that no more than two of the ministers might sit and vote in it.

though constitution was sanctioned in different manner.

This law was not, as in the case of the constitution ordinance of the Cape Colony in 1852, passed on the authority of special letters patent and afterwards amended and ratified by orders in council. It was an ordinary law passed by the colonial legislature, but contained a clause providing that it should only take effect on the issue by the governor of a proclamation announcing that the royal assent had been given. It was supplemented, however, by letters patent, issued after its ratification, revoking the original charter granted by the letters patent of 1856, and other letters patent subsequent to that date wherein provision had been made for the government of Natal. These letters patent also defined the duties of the governor in terms similar to those used by the letters patent defining the duties of the governor of the Cape of Good Hope, and were accompanied by similar Royal Instructions. Since

that time the Act establishing responsible government and other laws regulating the constitution have been amended in various directions by further Acts passed by the colonial legislature.

Natal constitution ultimately based on Royal Charter is flexible in character.

Thus the constitution of Natal is also contained in a number of instruments, some of which are letters patent and Royal Instructions while others are laws passed from time to time by the colonial legislature itself. The document on which the laws were originally based is the charter granted in 1856, by virtue of which a legislature was created competent to pass an Act establishing responsible government as it did in 1893. Though revoked by the further letters patent which constituted the office of governor on lines conformable to the conditions of responsible government, certain articles of this charter relating to electoral matters were revived by Act of the Natal legislature. In any case it remains the original source of the constitution. It is a flexible constitution like that of the Cape Colony.

Except in South Africa responsible government always granted by Act of Parliament.

Coast Colonies in South Africa accorded large share in drafting their own constitutions.

The South African colonies have not, like those of North America, Australia and New Zealand derived their constitutions from statutes of the Imperial parliament. Owing perhaps to the contentious nature of South African politics, the Imperial government has resorted once more to the prerogative of the British Crown. At the same time the coast colonies were allowed in great measure to originate as well as develop their own constitutions, and this possibly was the reason why the

British parliament did not insist that their constitutions should be settled by statute.

In case of Transvaal and Orange River Colony the Crown granted responsible government without reference to colonial legislatures.

But when in 1905 letters patent were issued providing for the establishment of an elective instead of an appointed legislative council in the Transvaal, a departure was made, even from the South African precedent. The new scheme of government was in no way the product of the existing legislative council. If an elective legislative council had ever come into existence in the Transvaal under the 1905 constitution, it is safe to assume that when the time came for granting responsible government it would have had a good deal to say on the subject of the future constitution, for it would have had a title to speak on behalf of the people. Owing however to a change of government in the United Kingdom the policy of establishing representative government was abandoned and the Imperial Government announced their intention of advising the Crown to revoke the Letters Patent of 1905 as a preliminary step to the grant of full responsible government. A constitution was then framed and brought into force by the prerogative of the Crown on the sole responsibility of the Imperial Government. That government was not fortified by the advice of any legislative body elected by the people of the Transvaal, for there was no such body in existence, but arrived at its decision as to what would be the best form of constitution upon such information as it possessed with regard to local opinion and after consider-

ing the recommendations of a committee, appointed by itself to investigate the situation then existing, which conducted its enquiries and reported in private. The same procedure was followed in the case of the Orange River Colony.

Significance of constitutional change effected.

It is well to realise the constitutional position clearly. In the fact that responsible government was granted by letters patent and orders in council, a departure was made from the practice adopted in the case of all self-governing colonies outside South Africa. In the fact that responsible government was granted merely by an executive act without reference to a local legislature of any kind, a departure was made even from the precedent set in the case of Cape Colony and Natal. This revolution in constitutional procedure appears to have escaped notice altogether. It shows very clearly indeed how the power of the British parliament has declined as that of the cabinet has increased.

Transvaal and Orange River Colony constitutions however are highly flexible.

It follows that the constitution of the Transvaal does not, as in the case of Cape Colony and Natal, rest on colonial statutes as well as on letters patent. Its provisions are to be found almost exclusively in three documents, the letters patent constituting the legislature and ministerial offices, the letters patent constituting the office of Governor, and the Royal Instructions under the Sign Manual to the Governor, all of which are dated December 6, 1906. This constitution, although differing as has been seen in the method of its grant and

in the nature of the instruments in which it is contained, resembles the Cape Colony and Natal constitutions in being very flexible, and clearly contemplates the existence in the colonial legislatures of power to pass laws repealing or altering any of the provisions of the first named letters patent. This power does not of course extend to any alteration of the letters patent constituting the office of governor and defining his powers. These, as in the case of other colonial constitutions, expressly reserve to the Crown the power to revoke, alter or amend them. The first act of the new legislature was to pass an amending law to remedy technical difficulties occasioned by the terms of the constitution, and at least one other such law was passed in the course of the first session. The constitution of the Orange River Colony is contained in three similar instruments dated June 5, 1907, almost identical in their provisions with those which were applied to the Transvaal.

Question of procedure to be followed in effecting union.

This survey of past practice inevitably suggests the question of the procedure which would be adopted in creating one government for the four colonies now enjoying responsible government. Could this be done in the same way as was thought sufficient when responsible government was granted to each of them, or would an Act of the Imperial Parliament be required? The answer seems to be that Imperial legislation is the only possible course.

Campbell v. Hall. 20 State trials. p. 239.

It was settled in a famous case which was tried towards the end of the eighteenth cen-

tury that when the Crown has granted a legislative assembly to a colony its powers of legislating for that colony by order in council are at an end, unless they have been expressly reserved in the instrument creating the legislative assembly. In none of the constitutions which we are discussing is there any such reservation. On the contrary in all of them power to amend the constitution is expressly or by implication given to the colonial legislatures. The letters patent issued in 1905 for establishing an elective legislative council in the Transvaal did expressly reserve to the Crown such a right; the silence of the later letters patent upon the point is significant of the changed relation of the Crown to the new legislature. That relation in fact may best be summed up in the words of Lord Chelmsford in the judgment of the Privy Council in the case of the Bishop of Natal (1865): "After a colony or settlement has received legislative institutions the Crown (subject to the special provisions of any act of parliament) stands in the same relation to the colony or settlement as it does to the United Kingdom."

Crown cannot legislate for self-governing colonies, unless special power to do so reserved in constitution.

Moore. P.C. N.S. p. 149

It follows from these principles that the Crown in council could not abolish the legislatures which it has created in the four South African Colonies, nor establish another in their place. Whether each could validly abolish itself and give back to the Crown the power of providing by order in council for its government may be open to doubt. Such acts have been passed by elective legislatures, by

Doubtful whether Crown could cancel constitutions on motion of colonies themselves.

Jamaica in 1866, and by Grenada, Tobago and St. Vincent in 1876. But these Acts were ratified by Acts of the Imperial parliament and the preamble of the Act relating to the three last named colonies alleges that the Acts of the colonial legislatures to which ratification was to be given, were of doubtful validity.

39 and 40 Vict., C. 47.

Precedent points to procedure by an Act of Imperial parliament.

But it is hardly necessary to discuss such an alternative, or to enquire into the consequences of such an improbable and undesirable contingency. In the Dominion of Canada and in the Commonwealth of Australia, the people of South Africa have before them two notable precedents for their guidance when they decide to constitute a national government; and though they may desire to see the government of South Africa constituted on different lines from those of Canada or Australia, it is difficult to see any reason for departing from the procedure by which these constitutions were granted. Following their authoritative examples we may predict that an Imperial statute will be required to ratify the new constitution which will have been framed by the governments of the several colonies in consultation and accepted by the people of South Africa whom they represent. Such a course is not merely recommended by precedent, but is plainly indicated if not indeed prescribed by constitutional law and practice.

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